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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet in January 2004. The meeting date will be announced upon scheduling. See tentative agenda on pages 1731-1733 of this Administrative Register.
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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - JANUARY 2004 (TO BE ANNOUNCED)

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11 KAR 5:034. CAP grant student eligibility.
11 KAR 5:130. Student application.

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11 KAR 8:030. Teacher scholarships.

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11 KAR 16:010. Robert C. Byrd Honors Scholarship Program.

DEPARTMENT OF TREASURY

State Treasury
20 KAR 1:040. Unclaimed properties; claims.
20 KAR 1:080. Reports to be filed by holders of unclaimed property.
20 KAR 1:090. Accounts for unclaimed property that was held in an interest-bearing demand, savings or time deposit.
20 KAR 1:100. Multiple claims on the Unclaimed Property Fund.

REVENUE CABINET

Sales and Use Tax; Service and Professional Occupations
103 KAR 26:120. Advertising agencies.

GENERAL GOVERNMENT CABINET

Boards and Commissions

Board of Optometric Examiners
201 KAR 5:100. Expungement.

Board of Dentistry
201 KAR 8:490. Expungement of records. (Deferred from August)

Board of Hairdressers and Cosmetologists
201 KAR 12:020. Examination. (Not Amended After Comments) (Deferred from November)
201 KAR 12:025. Additional study after failing examination. (Not Amended After Comments) (Deferred from November)
201 KAR 12:030. License required. (Not Amended After Comments) (Deferred from November)
201 KAR 12:031. Replacement of license - duplicate license. (Not Amended After Comments) (Deferred from November)
201 KAR 12:045. Apprentice, nail technician, esthetician and instructor’s licensing. (Not Amended After Comments) (Deferred from November)
201 KAR 12:050. Reciprocity for valid licensee. (Not Amended After Comments) (Deferred from November)
201 KAR 12:055. Instructor’s license for out-of-state applicant. (Not Amended After Comments) (Deferred from November)
201 KAR 12:060. Inspections. (Not Amended After Comments) (Deferred from November)
201 KAR 12:065. Inspection of new, relocated and change of owner salons. (Not Amended After Comments) (Deferred from November)
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201 KAR 12:100. Sanitation standards. (Deferred from November)
201 KAR 12:101. Equipment sanitation. (Not Amended After Comments) (Deferred from November)
201 KAR 12:110. School license. (Not Amended After Comments) (Deferred from November)
201 KAR 12:115. School requirements for esthetics course. (Amended After Comments) (Deferred from November)
201 KAR 12:120. School faculty. (Amended After Comments) (Deferred from November)
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201 KAR 12:140. School equipment. (Not Amended After Comments) (Deferred from November)
201 KAR 12:150. School records. (Not Amended After Comments) (Deferred from November)
201 KAR 12:200. Requirements for continuing education for renewal of license. (Not Amended After Comments) (Deferred from November)
201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary waiver of requirements. (Not Amended After Comments) (Deferred from November)
201 KAR 12:220. Esthetic fee requirements. (Not Amended After Comments) (Deferred from November)
201 KAR 12:230. Code of ethics. (Not Amended After Comments) (Deferred from November)
201 KAR 12:240. Dual cosmetologist/esthetic instructor license. (Not Amended After Comments) (Deferred from November)

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301 KAR 1:201. Fishing limits.
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401 KAR 5:005. Permits to construct, modify, or operate a facility. (Amended After Comments)
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401 KAR 63:005. Open burning. (Public Hearing in November)

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401 KAR 100:030. Remediation requirements.

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405 KAR 8:001. Definitions for 405 KAR Chapter 8. (Not Amended After Comment) (Deferred from December)

Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10. (Not Amended After Comment) (Deferred from December)

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405 KAR 18:001. Definitions for 405 KAR Chapter 18. (Not Amended After Comment) (Deferred from December)

Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20. (Not Amended After Comment) (Deferred from December)

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805 KAR 1:190. Gathering lines. (Public Hearing in November)

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  907 KAR 1:023 & E. Review and approval of selected therapies as ancillary services in nursing facilities.
  907 KAR 1:026 & E. Dental services.
  907 KAR 1:045 & E. Payments for community mental health center services. ("E" expires 4/19/04) (Written Comments Received)
  907 KAR 1:065 & E. Payments for price-based nursing facility services.
  907 KAR 1:604 & E. Recipient cost-sharing.
  907 KAR 1:626 & E. Reimbursement of dental services.

Payments and Services
  907 KAR 3:090 & E. Acquired brain injury services. ("E" expires 4/19/04) (Public Hearing in November)

Substance Abuse
  908 KAR 1:340 & E. Narcotic treatment programs.

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  922 KAR 1:320. Services appeals.
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CABINET FOR HEALTH SERVICES
  Department for Public Health

CABINET FOR FAMILIES AND CHILDREN
  Department for Community Based Services
  Protection and Permanency
Filing and Publication
Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, financial 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
31 KAR 6:010E

The Help America Vote Act of 2002, Pub.L. 107-252, Section 402(a), requires states to implement a state-based complaint procedure to remedy grievances in elections for federal offices. Under Section 402(b)(1)(A) of the Act, states must certify by January 1, 2004 that a state-based complaint system is in place. This emergency administrative regulation establishes a state-based complaint procedure and must be placed into effect immediately to prevent the loss of federal funds under Section 253 of the Act. The reason an ordinary administrative regulation is not sufficient: An ordinary administrative regulation will not be effective by January 1, 2004, the deadline for compliance and eligibility for federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December 5, 2003.

PAUL E. PATTON, Governor
JOHN Y. BROWN III, Chairman

KENTUCKY STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)
31 KAR 6:010E. State-based administrative complaint procedure.

RELATES TO: KRS 117.015(1), 42 U.S.C. 15511
STATUTORY AUTHORITY: KRS 117.015(1)
EFFECTIVE: December 5, 2003
NECESSITY, FUNCTION, AND CONFORMITY: The Help America Vote Act of 2002, Pub.L. 107-252, Section 402(a), requires the establishment of a state-based administrative complaint procedures to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections of their designee as defined in KRS 117.015 and 117.025.
(2) "Complainant" means the person who files a complaint under this administrative regulation.
(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.
(4) "Presiding officer" means the person appointed by the board to conduct a hearing on a complaint.
(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002.
(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III of the Act by any election official may file a written complaint with the board.
(2) All complaints shall:
(a) Be limited to violations of the requirements placed upon the states by Title III, specifically:
1. Standards for voting systems;
2. Requirements for provisional voting and voting information; and
3. Requirements for computerized statewide voter registration lists and for voters who register by mail;
(b) Be in writing on the form prescribed by the board and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.
(c) Include the full name, address, and telephone number of the complainant.
(d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specifics of the complaint.
(e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.
(f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation, except the board shall dismiss a complaint that does not state on its face a violation of Title III.
(2) If a complaint does not comply with Section 3 of this administrative regulation the board shall, within three (3) days, send the complainant a notice explaining the areas of noncompliance in the complaint.
(3) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.
(4) Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.
(5) The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.
(6) Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or a hearing may be requested. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.
(7) The executive director of the board shall be responsible for arranging the date, time and place for hearings.
(8) The board may consolidate multiple complaints into a single proceeding if feasible where the complaints arise out of the same fact situation and have common questions of law and facts.
(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.

Section 5. Hearings. (1) Hearings shall be conducted in accordance with KRS Chapter 138.
(2) Hearings shall be tape recorded and no transcript of the hearing shall be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at their own expense.
(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.
(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.
(5) All testimony shall be taken under oath or affirmation.
(6) The complainant has the burden of proof.

Section 6. Final Determination. (1) If the presiding officer de-
termsines that there was a past, present, or potential violation of Title III, then the final determination shall set forth the facts of the violation, the specific violation of Title III, and provide a remedy.

(2) The remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.

(3) The remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system into compliance with Title III.

Section 7. Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.

(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.

(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 8. Publication of Final Determinations. (1) All final determinations shall be posted on the Internet homepage of the Board and retained in the permanent archival records of the Board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 9. Incorporation by Reference. (1) Complaint form for Title III Violations - SBE 21(12/03).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.

JOHN Y. BROWN III, Chair
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: December 5, 2003 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary Sue Helm

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements placed upon the states by Section 402(a) of the Help America Vote Act of 2002, Pub L. 107-252, for a state-based administrative complaint process for elections for federal office.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Section 402(a) of the Help America Vote Act of 2002 and to qualify for federal election assistance payments to the state and units of local government under Parts 1 and 2 of Subtitle D of the Act and the state plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides an administrative process for complaints by citizens who believe that a violation of any provision of Title III of the Help America Vote Act of 2002 has occurred, is occurring, or is about to occur. This process helps assure that voters will have better access to the polls and an efficient mode to cast their ballot in elections for federal office.

(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 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: All eligible voters, all candidates for federal office, all political parties, all election officials and boards, and all vendors of voting systems.

(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 for the requirements for the state-based complaint process for elections for federal office.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are costs associated with printing and distributing the complaint form and training election officials. These costs shall be paid from existing budgets for FYE 2003, and federal payments.

(b) On a continuing basis: There are costs associated with conducting hearings under KRS Chapter 13B. These costs consist of fees for the hearing officer and the expense of recording the hearing.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state funds appropriated to the State Board of Elections and federal funds under the Help America Vote Act.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding may be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all voters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 15512

2. State compliance standards. KRS 117.015(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 15512.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
31 KAR 6:020E

The Help America Vote Act of 2002, Pub L. 107-252, Section 302, requires states to implement a process for provisional voting in elections for federal offices. Under Section 302(d) of the Act, states must implement provisional voting by January 1, 2004. This emergency administrative regulation establishes a procedure for provisional voting and must be placed into effect immediately to prevent the loss of federal funds under Section 253 of the Act. An ordinary regulation will not be effective by January 1, 2004, the deadline for compliance and eligibility for federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 26, 2003.

PAUL E. PATTON, Governor
JOHN Y. BROWN III, Chairman
KENTUCKY STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 6:020E. Provisional voting.

RELATES TO: KRS 117.015(1), 42 U.S.C. 15482
STATUTORY AUTHORITY: KRS 117.015(1)
EFFECTIVE: November 29, 2003
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to comply with the requirement of the Help America Vote Act of 2002, Pub. L. 107-252, Section 302, for provisional voting in elections for federal offices.

Section 1. Applicability. This administrative regulation shall be applicable to special, primary and general elections for the federal elective offices of President/Vice President, United States Senator and United States House of Representatives.

Section 2. Definitions. (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.
(2) "Provisional ballot outer envelope" means the envelope with the following printed on the front:
(a) Precinct election officer checklist of circumstances for issuing a provisional ballot;
(b) Provisional ballot affirmation; and
(c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.
(3) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.

Section 3. Precinct Election Officer Notice. (1) A precinct election officer, who cannot confirm a potential voter's eligibility to vote on election day, shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or vote a provisional ballot in that precinct provided they reside at a residence within the geographical boundaries of the precinct.
(2) If the individual chooses to cast a provisional ballot, then they shall not be eligible to vote in any other manner.

Section 4. Procedures for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster prescribed by the State Board of Elections, which contains the individual's Social Security number, name, address, signature, date of birth, and poltical party affiliation.
(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.
(3) The circumstances for issuing the provisional ballot:
(a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;
(b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;
(c) Voter who does not have identification;
(d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours;
(e) Voter has been challenged by all four (4) precinct election officers; or
(f) Other.
(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope and the provisional ballot outer envelope.
(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the polling place declaring they are a registered voter in the county and reside within the geographical boundaries ofLe said precinct. The written affirmation executed by the individual shall state:
(a) Their name;
(b) Current residential address;
(c) Political party affiliation;
(d) That they are a registered voter in the county and reside in the precinct;
(e) That they know of no legal reason to prevent their vote from being cast and counted;
(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;
(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and
(h) That the individual further understands that if they execute the affirmation and are not a registered voter at the current address stated, they have committed a criminal act.
(6) The precinct election officer shall direct the individual to a private voting area in which they shall cast their provisional ballot.
(7) (a) An individual may spoil up to two (2) provisional ballots and be issued no more than a total of three (3) provisional ballots.
(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".
(8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.
(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.
(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet prescribed by the State Board of Elections, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted the reason why.
(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.
(12) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.
(13) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.
(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.
(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.
(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m. prevailing time, on the day following the election.
(4) Upon completion of a recanvass of vote totals, the county
board of elections shall report recanvassed vote totals on the recanvass of official count and record of election totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State’s Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot.

(7) A minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot envelope appropriate to their finding, the county clerk shall photocopy the face of each envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted the reason why.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots prescribed by the State Board of Elections shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place for the signature of all four (4) precinct election officers.

(11) County boards of election shall instruct precinct election officers as to who is eligible to vote a provisional ballot and the proper procedures.

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

(a) Provisional Ballot Precinct Signature Roster—SBE 35 (11/03);
(b) Provisional Ballot Informational Sheet - SBE 36 (11/03);
(c) Provisional Ballot Accountability Sheet - SBE 37 (11/03);
(d) Provisional Ballot Outer Envelope - SBE 38 (11/03);
(e) Provisional Ballot Inner Envelope - SBE 39 (11/03);
(f) Certification of Official Count and Record of Election Totals - SBE 49 (11/03);
(g) Recanvass of Official Count and Record of Election Totals - SBE 49A (11/03).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN Y. BROWN III, Chairman
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: November 26, 2003 at 3 p.m.
CONTACT PERSON: Mary Sue Helm, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary Sue Helm

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the requirements placed upon the states by the Help America Vote Act of 2002, Pub.L. 107-252, Section 302, codified at 42 U.S.C. 15482, allowing voters in an election for federal office to cast a provisional ballot when their name does not appear on the precinct list of eligible voters or when their eligibility to vote has been challenged.
(b) The necessity of this administrative regulation: To assure conformity with federal law in elections for federal office.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the State Board of Elections to enact administrative regulations necessary to administer the election laws of the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Describes the procedures for casting provisional ballots to be filed by county clerks, precinct election officers, and voters.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Informs those who desire to vote in an election for federal office when their name does not appear on the precinct voting list or when their eligibility to vote has been challenged.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every county clerk, precinct election officer, and voter.

(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: Election officials and voters will have to follow the procedures to implement provisional voting.

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

(a) Initially: Unknown
(b) On a continuing basis: Unknown

(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: Grants of federal funds received by the State Board of Elections under the Help America Vote Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: There shall be no increase in fees is anticipated or needed. Initially, federal funding for the grants under the Help America Vote Act should suffice. There will be paper and printing costs for the forms required by this administrative regulation.

(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 affected parties are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15482.
2. State compliance standards, KRS 117.015(1).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None.

STATEMENT OF EMERGENCY

907 KAR 1:013E

This emergency administrative regulation is being promulgated to amend the DRG reimbursement methodology for inpatient hospital services. This amendment establishes a supplemental Medi-caid shortfall DSH payment for all DSH hospitals and establishes psychiatric and rehabilitation distinct part units within acute care
hospitals. This action must be taken on an emergency basis to ensure adequate access to hospital services for Medicaid 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 in hospitals whose access to services would be jeopardized without the implementation of these changes in the reimbursement methodology. This emergency administrative regulation differs from the emergency administrative regulation filed on November 3, 2003 in that it establishes a supplemental Medicaid shortfall DHF payment for DHF hospitals and establishes psychiatric and rehabilitation distinct part units within acute care hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250 to 447.280, 42 U.S.C. 1395(f), 1395(mm), 1395a, 1395b, 1395d, 1396-4


EFFECTIVE: December 2, 2003

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 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 the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide an acute care hospital service in accordance with 902 KAR 20:016.
   (2) "Arithmetic mean" means the sum of all values in a set of values divided by the number of values.
   (3) "Base rate" means the per discharge rate for operating and capital-related components for an acute care hospital.
   (4) "Base year" means the cost reporting period upon which a rate is based.
   (5) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge or per diem methodology do not exceed payments in the prior year adjusted for inflation based on the CMS Input Price Index, changes in patient utilization.
   (6) "Budget neutrality factor" means a factor that is applied to a relative weight per diem rate or the direct graduate medical educational payment so that budget neutrality is achieved.
   (7) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.
   (8) "Certificate of need" is defined in KRS 214B.016(6).
   (9) "CMS" means Centers for Medicare and Medicaid Services.
   (10) "Cost basis" means relating to the allowable Medicaid inpatient costs incurred by a provider in a base year. Medicaid inpatient costs are the sum of routine Medicaid costs determined by applying each hospital's routine per diem amount to the allowed patient days in the base year and ancillary Medicaid costs determined by applying ancillary costs-to-charge ratios derived from base year cost reports to ancillary charges for that hospital's Medicaid claims with dates of service in the base year.
   (11) "Cost outlier" is a claim which has an operating cost which is $29,000 greater than a Medicare DRG's outlier threshold.
   (12) "Countable revenue" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.
   (13) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 905 KAR 1:110.
   (14) "Department" means the Department for Medicaid Services or its designated agent.
   (15) "Diagnostic related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources, as defined by Medicare.
   (16) "Disproportionate share hospital" or "DSH" means a hospital that:
      (a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and
      (b) Meets the criteria established in 42 U.S.C. 1396r-4(d).
   (17) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25, 180(10) "DRG" means Data Resources, Incorporated.
   (19) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.
   (20) "Fixed cost threshold" means the amount combined with the full DRG payment for each DRG to determine the outlier threshold.
   (21) "[443]" "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(6)(A).
   (22) "[432]" "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.
   (23) "[143]" "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:
      (a) To an individual who is:
         (1) Determined to be indigent in accordance with KRS 205.640; and
         (2) Not a Medicaid recipient; and
      (b) For which an individual shall not be billed by the hospital.
   (24) "[144]" "Indigent care eligibility criteria" means the criteria as specified in Section 29-46 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.
   (25) "[458]" "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
   (26) "Intra hospital transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.
   (27) "Level II neonatal center" means a facility that provides specialty care for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant's body temperature, and feeding assistance.
   (28) "Level III neonatal center" means a facility which provides specialty care of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.
   (29) "Long-term acute care hospital" or "LTAC" means a hospital that meets the requirements established in 42 C.F.R. 416.3(b).
   (30) ""[469]" "Medicaid shortfall" means the difference between a provider's cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions in Sections 3, 11, and 23 [4, 5, and 46] of this administrative regulation.
(31) "Medical education costs" are direct costs associated with an approved intern and resident program and are subject to limits established by Medicare.

(32) [(17)] "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(33) [(18)] "Operating costs" means allowable routine, ancillary service and special care unit costs related to inpatient hospital services.

(34) "Outlier threshold" means the sum of the operating payment amount, capital-related payment amount, and the fixed loss cost threshold.

(35) [[46]] "Pediatric teaching hospital" is defined in KRS 205.565(1).

(36) "Per diem rate" means the per diem rate effective April 1, 2003, for rehabilitation hospitals, long-term acute care hospitals, critical access hospitals, psychiatric hospitals, and psychiatric services provided in an acute care hospital.

(37) "Price level increase" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(38) [(20)] "Professional component cost" means a physician compensation cost paid by the provider for a psychiatric service to a patient in a psychiatric hospital [end includes the following categories of practice:]

(a) Anesthesiology;
(b) Cardiology;
(c) Electroencephalography;
(d) Pathology;
(e) Radiology; and
(f) Psychiatry in a psychiatric hospital only.

(39) [[44]] "Psychiatric access hospital" means an acute care hospital which:

(a) Is not located in a Metropolitan Statistical Area as determined by the U.S. Census Bureau;
(b) Provides at least 65,000 days of inpatient care in a fiscal year;
(c) Provides at least twenty (20) percent of inpatient care to Medicaid eligible recipients; and
(d) Provides at least 5,000 days of inpatient psychiatric care to Medicaid recipients in a fiscal year.

(40) [[22]] "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(41) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(42) "Rebase" means to redetermine base rates, per diem rates, and other applicable components of the payment rates using more recent data.

(43) [(23)] "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by a percent of increase as specified in Section 3 of this administrative regulation.

(24) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(44) "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification relative to the average resources required for all relevant discharges in the state.

(45) [[26]] "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(46) [[26]] "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or
(b) A hospital:
1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and
2. That does not possess only a residency program or rotation agreement.

(47) [[24]] "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).

(48) [(28)] "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(49) [(29)] "Type I hospital" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(50) [(30)] "Type II hospital" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type I or Type IV hospital.

(51) [[34]] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(52) [(32)] "Type IV hospital" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(53) [(33)] "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a rate is established for a hospital regardless of the hospital's fiscal year and is, as of April 1, 2003.

(54) [(34)] "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on the following:

(a) Utilization;
(b) Peer grouping; and
(c) Age of patient.

(55) [(36)] "Urban trauma center hospital" means an acute hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;
(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and
(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

(56) [(36)] "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diem within a specified peer group from lowest to highest.

Section 2. Reimbursement for an Inpatient Hospital Service. (43) The department shall reimburse for an inpatient hospital service provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 U.S.C. 1396a(a)(13).

(2) Excluding critical access hospitals, reimbursement for an inpatient hospital service shall be prospective.

Section 3. Payment for an Inpatient Acute Care Service in an Acute Care Hospital. (1) An acute care hospital shall be paid for an inpatient acute care service on a fully-prospective per discharge basis for the universal rate year beginning on or after April 1, 2003.

(2) For an inpatient acute care service in an acute care hospital, the total per discharge payment shall be the sum of:

(a) An operating payment amount;
(b) A capital-related payment amount; and
(c) If applicable, a cost outlier payment amount.

(3) An operating payment amount shall be based on a patient's DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The operating payment amount shall be calculated for each discharge by multiplying a hospital's operating base rate by the Medicare-specific DRG relative weight.

(4) The operating base rate for each hospital shall be the Medicare national standardized amount as adjusted by Medicare for each hospital using the Medicare wage index and Medicare indirect medical education operating adjustment factor.

(a) The Medicare DSH operating adjustment factor shall be excluded from the calculation of the operating base rate for each hospital.

(b) The adjusted Medicare national standardized amount shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payment effective on October 1 of the year immediately preceding the universal rate year.
(c) Data not specifically available in the Federal Register shall be obtained from each hospital's Medicare fiscal intermediary.

(5) The capital-related payment amount shall be based on a patient's DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The capital payment amount shall be calculated for each discharge by multiplying a hospital's capital-related base rate by the Medicare-specific DRG relative weight.

(6) The capital-related base rate for each hospital shall be the Medicare federal capital rate, as adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor if applicable, the Medicare geographic adjustment factor, and the Medicare indirect medical education capital adjustment factor published in the Federal Register.

(a) The Medicare DSH capital adjustment factor shall be excluded from the calculation of the capital-related base rate for each hospital.

(b) For each universal rate year beginning July 1, 2004, the adjusted Medicare federal capital rate shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payments effective on October 1 of the year immediately preceding the universal rate year.

(c) Data not specifically available in the Federal Register shall be obtained from each hospital's Medicare fiscal intermediary.

(7) An additional cost outlier payment shall be made for an approved discharge meeting the Medicare criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.

(a) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(b) The estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be calculated by multiplying the sum of the hospital-specific Medicare operating and capital-related costs-to-charge ratios by the discharge-allowed charges.

(c) The Medicare operating and capital-related costs-to-charge ratios shall be those used by Medicare published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(d) An outlier threshold shall be calculated as the sum of the discharge's operating payment amount, capital-related payment amount and the fixed loss cost threshold.

(e) Payment for a cost outlier shall be eighty (80) percent of the amount that estimated costs exceed the discharge's outlier threshold.

(b) Kentucky Medicaid-specific DRG relative weights shall be calculated using all applicable Medicaid discharges from the hospital's base year claims data and determined as follows:

(a) Medicaid claims from the base year claims data shall be assigned Medicare DRG classifications using the Medicare DRG classification system.

(b) Claims data for discharges that are reimbursed on a per diem basis shall be removed, including:

1. Psychiatric claims from all hospitals, identified as those claims from acute care hospitals with psychiatric diagnoses.
2. All claims from psychiatric hospitals.
3. All claims from rehabilitation hospitals.
4. All claims from critical access hospitals.
5. All claims from long-term acute care hospitals.
6. Claims for transplant services as specified in subsection (13) of this section shall be removed.
7. Claims for patients discharged from out-of-state hospitals shall be removed.
8. Allowed days for the remaining discharges shall be identified.
9. A unique set of DRGs and relative weights shall be established for a facility identified by the department as qualifying as a Level III neonatal center.
10. A claim classified into DRG 385 through 390 for a qualifying hospital where care is provided in a neonatal intensive care unit bed shall be identified and reassigned to DRG 685 through 690, respectively.
11. Only a qualifying hospital shall be eligible for payment using DRGs 685 through 690.

(c) A statewide Medicaid arithmetic mean length-of-stay per discharge shall be determined for each DRG classification.

(b) Relative weights shall be calculated for each DRG by multiplying the Medicare relative weight by the ratio of the Medicaid arithmetic mean length-of-stay to the Medicare arithmetic mean length-of-stay, multiplied by the budget neutrality factor.

(b) For purposes of calculating the DRG relative weights in paragraph (a) of this subsection, Medicare DRG relative weights and arithmetic mean length-of-stay shall be those published in the Federal Register effective on October 1 of the year immediately preceding the universal rate year.

(c) An indirect medical education adjustment factor shall be the same indirect medical education factor used by Medicare for Medicare rates effective on October 1 of the year immediately preceding the universal rate year.

(a) An indirect medical education operating adjustment factor shall be the same used by Medicare, based on the published Medicare formula. The ratio of intern and residents to available beds used in the Medicare formula shall be obtained from each hospital's Medicare fiscal intermediary.

(b) An indirect medical education capital adjustment factor shall be the same used by Medicare, based on the published Medicare formula. The ratio of intern and residents to average daily census used in the Medicare formula shall be obtained from each hospital's Medicare fiscal intermediary.

(11) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(a) A service reimbursed on a prospective discharge basis, the transfer payment amount shall be calculated based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

1. An average daily rate shall be calculated by dividing the allowable per discharge reimbursement amount, based on a patient's DRG classification, by the statewide Medicaid average length-of-stay for a patient's DRG classification.
2. An allowable per discharge reimbursement amount, based on a patient's DRG classification, shall be the sum of the operating payment amount and the capital-related payment amount.
3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount.

(b) For a hospital receiving a transferred patient, reimbursement shall be the allowable per discharge reimbursement amount, based on the patient's DRG classification, and, if applicable, a cost outlier payment amount.

(11) A transfer from an acute care hospital to a qualifying postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection will be treated as a postacute care transfer.

(a) The following shall qualify as a postacute care setting:

1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital.
2. A skilled nursing facility.
3. A home health agency.

(b) The following DRGs shall be eligible for the postacute care transfer payment:

1. DRG 14, Specific cerebrovascular disorders except transient ischemic attack.
2. DRG 113, Amputation for circulatory system disorders except upper limb and toe.
3. DRG 209, Major joint limb realignment procedures of lower extremity.
4. DRG 210, Hip and femur procedures except major joint procedures age > seventeen (17) with CC.
5. DRG 211, Hip and femur procedures except major joint procedures age > seventeen (17) without CC.
6. DRG 236, Fractures of hip and pelvis.
7. DRG 263, Skin graft and debridement for skin ulcer or cellulitis with CC.
8. DRG 264, Skin graft and debridement for skin ulcer or cellu-
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llis without CC;

9. DRG 429, Organic disturbances and mental retardation; and
10. DRG 483, Tracheostomy except for face, mouth and neck diagnoses.

c) Each transferring hospital shall be paid a per diem rate for each day of stay.

d) No payments shall exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

2. DRGs 209, 210, and 211 shall receive fifty (50) percent of the full DRG payment plus the per diem for the first day of the stay and fifty (50) percent of the per diem for the remaining days of the stay, up to the full DRG payment.

3. The remaining DRGs as referenced in paragraph (a) of this subsection shall receive twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer.

(d) The per diem amount shall be the full DRG payment allowed divided by the statewide Medicaid average length of stay for that DRG.

12. Effective February 1, 2004, an intrahospital transfer to or from an acute care bed to or from a rehabilitation or psychiatric distinct part unit shall be reimbursed;

(a) The full DRG payment allowed; and

(b) The facility-specific distinct part unit per diem rate for each day the patient remains in the distinct part unit.

13. A kidney, cornea, pancreas, or kidney and pancreas transplant shall be reimbursed at the prospective per discharge reimbursement methodology according to the patient’s DRG classification. All other transplants shall be reimbursed in accordance with 907 KAR 1:350.

14. Payment for a federally-defined hospital swing bed shall be made in accordance with 907 KAR 1:065.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

1. Be included with the related inpatient billing and shall not be billed separately as an outpatient service.

2. Exclude a service furnished by a home health agency, a skilled nursing facility and hospice, unless it is a diagnostic service related to an inpatient admission and an outpatient maintenance dialysis service.

Section 5. Payment for Direct Graduate Medical Education Costs at Hospitals with Medicare-approved Graduate Medical Education Programs. (1) The department shall reimburse for the direct costs of a graduate medical education program approved by Medicare.

(2) A payment shall be made separately from the per discharge and per diem payment methodologies and shall be made on an annual basis.

(3) An annual payment amount shall be determined for each hospital as follows.

(a) The hospital-specific and national average Medicare per intern and resident amount effective for Medicare payments on October 1 immediately preceding the universal rate year are obtained from each approved hospital’s Medicare fiscal intermediary.

(b) The higher of the average of the Medicare hospital-specific per intern and resident amount or the Medicare national average amount shall be selected.

(c) The selected per intern and resident amount shall be multiplied by the hospital’s number of interns and residents used in the calculation of the indirect medical education operating adjustment factor. The resulting amount is an estimate of total approved direct graduate medical education costs.

(d) The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital’s most recently finalized Medicaid cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount.

(e) The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program.

(f) Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 6. Payment for Rehabilitation Services in an Acute Care Hospital. (1) Effective February 1, 2004, a rehabilitation service in an acute care hospital that has a Medicare-designated rehabilitation distinct part unit shall be reimbursed on a per diem basis.

(2) A rehabilitation per diem rate shall be a facility-specific rate based on the most recently received cost report and in accordance with Section 14 of this administrative regulation.

(3) A rehabilitation service provided in a hospital that does not have a Medicare-designated distinct part unit shall be reimbursed the median of rehabilitation services provided in all acute care hospitals.

Section 7. Payment for an Inpatient Psychiatric Service in an Acute Care Hospital. (1) Effective February 1, 2004, an inpatient psychiatric service provided in an acute care hospital that has a Medicare-designated psychiatric distinct part unit shall be reimbursed on a per diem basis.

(2) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital’s psychiatric per diem rate by the number of allowed patient days.

(3) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

(a) The psychiatric operating cost-per-day amounts used to determine the psychiatric operating per diem rate shall be calculated for each hospital by dividing its Medicaid psychiatric cost basis, excluding capital costs and medical education costs, by the number of Medicaid psychiatric patient days in the base year.

(b) The Medicaid psychiatric cost basis and patient days shall be based on Medicaid claims for patients with a psychiatric diagnosis with dates of service in the base year. The psychiatric operating per diem rate shall be adjusted for:

1. The price level increase from the midpoint of the base year to the midpoint of the universal rate year using the CMS Input Price Index; and

2. The change in the Medicare published wage index from the base year to the universal rate year.

(4) A psychiatric capital per diem rate shall be facility-specific and shall be calculated for each hospital by dividing its Medicaid psychiatric capital cost basis by the number of Medicare psychiatric patient days in the base year. The Medicaid psychiatric capital cost basis and patient days shall be based on Medicaid claims for patients with psychiatric diagnoses with dates of service in the base year. The psychiatric capital per diem rate shall be adjusted as described in Section 10 of this administrative regulation.

(5) For psychiatric services in an acute care hospital that does not have a Medicare-designated distinct part unit, the psychiatric per diem rate shall be the median rate for all psychiatric services in an acute care hospital.

Section 8. Hospital’s Wage Index and Wage Area. (1) A hospital’s wage index, used to adjust per diem reimbursement rates established pursuant to Section 7 of this administrative regulation, shall be the wage index published by CMS in the Federal Register on October 1 immediately preceding the universal base rate year.

(2) For the purpose of applying a wage index, the department shall assign a hospital to:

(a) The wage area in which it is physically located as originally classified by CMS for the Medicare Program for the base year; or

(b) The wage area to which a hospital has been reclassified by the Medicare Geographic Classification Review Board for the base year.

(3) The department shall not consider reclassification of a hospital to a new wage area except during a rebase period.
Section 9. Budget Neutrality Factors. (1) When rates are rebased, estimated projected reimbursement in the universal rate year for hospitals as described in Sections 3 and 11 of this administrative regulation shall not exceed payments for the same services in the prior year adjusted for inflation using the CMS Input Price Index, and adjusted for changes in patient utilization.

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated for base year claims. Amounts shall be adjusted for changes in inflation using the CMS Input Price Index and patient utilization.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated for base year claims.

(4) If the sum of all the acute care hospitals' estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals' adjusted estimated payments under the prior year's reimbursement methodology, the following universal rate year reimbursement components shall be adjusted and shall result in estimated payments that are budget neutral:

(a) DRG relative weights; and
(b) Periodic direct graduate medical education payment amounts.

Section 10. Reimbursement Updating Procedures. (1) The department shall base per discharge base rates, per diem rates, DRG relative weights, and the following applicable components of the payment rates no less frequently than every three (3) years using the most recent audited cost report and Medicare rate data available to the department:

(a) Operating rates;
(b) Capital-related rates;
(c) Medical education costs;
(d) Cost-to-charge ratios;
(e) DRG relative weights; and
(f) Outlier thresholds.

(2) Beginning July 1, 2004, the department shall adjust rates annually on July 1 using the Medicare DRG base rate in effect October 1 of the preceding year as published in the Federal Register and confirmed with each hospital's fiscal intermediary.

(3) The department shall adjust per diem rates annually according to the following:

(a) An operating per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the CMS Input Price Index; and
(b) A capital cost per diem rate shall not be adjusted.

(4) Except for an appeal in accordance with Section 29 of this administrative regulation, no other adjustment shall be made.

Section 11. Payment for Rehabilitation Hospital, Long-term Acute Care Hospital, and Psychiatric Hospitals. (1) Effective April 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a rehabilitation hospital, LTAC hospital, or psychiatric hospital shall continue to be reimbursed at the per diem rate based on the 1999 cost report which was in effect for the rate year beginning July 1, 2002.

(2) Effective November 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a psychiatric hospital previously designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children shall be reimbursed at the per diem rate as established in subsection (1) of this section.

(3) An inpatient service provided to an eligible Medicaid recipient shall be reimbursed by multiplying the hospital's per diem rate by the number of patient days.

(4) A newly-participating rehabilitation hospital or LTAC shall be paid in accordance with Section 12 of this administrative regulation.

(5) A psychiatric hospital shall:

(a) Except as provided in paragraph (b) of this subsection, have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in its array; or
(b) If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in its array.

(6) For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) in a nondisproportionate share hospital, the following shall apply:

(a) For the first thirty (30) days of inpatient service reimbursed on a per diem basis, payment shall be in accordance with Sections 3, 7, 13, and 21 of this administrative regulation; and
(b) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply:

1. To an inpatient service determined by the department to be medically necessary:
   a. Thirty (30) days after the date of admission of a child; or
   b. For a newborn, thirty (30) days from the date of discharge of the mother; and
2. Without regard to length of stay or number of admissions.

Section 12. Payment to a Newly-participating Rehabilitation Hospital or LTAC. (1) A newly-participating rehabilitation hospital or LTAC shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(2) A prospective rate shall be set based on the data referenced in subsection (1) of this section, not to exceed the upper limit for the class.

(3) A prospective rate shall be tentative and subject to settlement at the time the first audited fiscal year end cost report is available to the department.

(4) When a cost report is received and reviewed, a rate shall be set for the rehabilitation hospital or LTAC which shall be adjusted back by DRI to 1997 cost report data and trended forward for two (2) years for inflation by a rate of three (3) percent for the first year and two and eight-tenths (2.8) percent for the second year. 

1. Reimbursement rate for an acute-care hospital or for a rehabilitation hospital for the rate year beginning July 1, 2000 shall be determined by utilizing a rate on rate methodology as follows:
2. The department shall utilize a hospital's June 30, 2000 per diem rate that includes operating, professional and capital cost components; and
3. The per diem rate shall be multiplied by the rate of increase of two and eight-tenths (2.8) percent.

(5) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation.

(6) Payment for the following transplants shall be made in accordance with this section:

(a) Kidney;
(b) Cornea;
(c) Pancreas; or
(d) Kidney and pancreas.

(7) Payment for a transplant not listed in subsection (6) of this section shall be made in accordance with 907 KAR 1-350; and

(8) Payment for a federally defined hospital swing bed shall be made in accordance with 907 KAR 1-065.

Section 4. Psychiatric Hospital Inpatient Service. (1) The Department for Medicaid Services shall pay for an inpatient psychiatric hospital service provided to an eligible Medicaid recipient in a psychiatric hospital by multiplying the hospital's per diem rate by the number of allowed patient days.

(2) The per diem rate for a psychiatric hospital for the universal rate year beginning on or after July 1, 2000 shall be determined by the department in accordance with Sections 6 through 13 and 15 of this administrative regulation.

(3) A payment for a child under age six (6) years shall be made in accordance with Section 11 of this administrative regulation.

Section 13. [5] Critical Access Hospital. (1) The department shall pay for an inpatient service provided by an in-state [a] critical access hospital to an eligible Medicaid recipient through an interim per diem rate as established by CMS [the Centers for Medicare and Medicaid Services].
and Medicaid Services (CMS) for the Medicare Program.

(2) The effective date of a rate shall be the same as used by the Medicare Program.

(3) A hospital's final reimbursement shall reflect any adjustment made by CMS [the Centers for Medicare and Medicaid Services (CMS) for the Medicare Program].

(4) The provisions of Sections 3 through 11 [through-14] of this administrative regulation shall not apply to a critical access hospital, except:

(a) A hospital shall be required to submit an annual Medicare/Medicaid cost report;
(b) The cost report submitted by a hospital shall be subject to audit and review;
(c) Total payments made to a hospital under this section shall be subject to the payment limitation in 42 C.F.R. 447.271.
(d) An out-of-state critical access hospital shall be paid the median per diem rate of in-state critical access hospitals.
(e) Payment for a federally defined swing bed in a critical access hospital shall be made in accordance with 407 KAR 1:065.

Section 14. Cost Basis. (1) A hospital per diem rate shall be established relating to allowable Medicaid costs and Medicaid inpatient days.

(2) An allowable Medicaid cost shall:
(a) Be a cost allowed after a Medicaid or Medicare audit;
(b) Be in accordance with 42 C.F.R. Parts 412 and 413;
(c) Include a hospital provider tax; and
(d) Not include costs listed in Section 14 of the Medicaid Reimbursement Manual for Inpatient Hospital Services.

(3) The most recent Medicaid cost report for rehabilitation hospitals, LTAC hospitals, critical access hospitals, psychiatric services in acute care hospitals, and psychiatric hospitals available as of May 1 preceding the current universal rate year shall:
(a) Be the basis of a prospective payment; and
(b) Establish the base year.
(c) A prospective rate shall include both routine and ancillary costs.
(d) A prospective rate shall not be subject to retroactive adjustment, except for:
(a) A critical access hospital; or
(b) A facility with a rate based on unaudited data.
(e) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.
(f) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 C.F.R. 447.271.
(g) An overpayment shall be recouped by the department as follows:
(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or
(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 15. [7.] Use of a Universal Rate Year. (1) Except for the first year of the DRG per discharge system, a universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) In the first year of the DRG per discharge system, the universal rate year shall be the fifteen (15) month period from April 1, 2003 through June 30, 2004 [universal rate year shall be established as July 1 through June 30 of each year to coincide with the state fiscal year].

(3) [23] A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 16. [8.] Trending of a Cost Report. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trending to the beginning of the universal rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 17. [9.] Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be applied shall be the inflation factor prepared by DRI for the universal rate year.

Section 10. Peer-Grouping. (1) For rate-setting, a hospital shall be peer-grouped based on the number of beds licensed as of May 1 preceding the universal rate year.

(2) A peer group shall be:
(a) Zero to fifty (50) beds;
(b) Fifty-one (51) to 100 beds;
(c) 101-200 beds;
(d) 201-400 beds; or
(e) 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more but shall be subject to the upper payment limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer-grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital or an acute-care hospital that is restricted to providing rehabilitation services shall not be:
(a) Peer-grouped;
(b) Arrayed; or
(c) Subject to the operating cost upper payment limit.

Section 18. [14.] Minimum Occupancy Factor. (1) If a hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:
(a) Artificially increasing the occupancy factor to the minimum factor; and
(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:
(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer beds;
(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more beds; and
(c) A newly-constructed hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be
applied.

Section 19. [12.] Reduced Depreciation Allowance. (1) The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.
(2) The use of a reduced depreciation allowance shall not be applicable to a psychiatric hospital.

Section 20. Readmission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.
(2) Reimbursement for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 21. Reimbursement for Out-of-State Hospitals. (1) An acute care out-of-state hospital shall be reimbursed for an inpatient acute care service on a fully-prospective per diem basis for the universal rate year beginning on or after April 1, 2003.
(2) The operating payment amount shall be based on the patient's Medicare DRG classification. An operating payment amount shall be calculated for each discharge by multiplying a hospital's operating base rate by the Kentucky-specific DRG relative weight. A hospital's operating base rate shall be the Medicare national standardized amount, as adjusted by Medicare for each hospital using the Medicare wage index. An operating payment amount for an out-of-state provider shall exclude:
1. The Medicare DSH operating adjustment factor;
2. The Medicare indirect medical education operating adjustment factor;
3. The capital-related component of Medicare's operating payment amount shall be made on a per discharge basis. A per discharge payment amount shall be calculated for each discharge by multiplying a hospital's capital-related base rate by the Kentucky-specific DRG relative weight. A hospital's capital-related base rate shall be the Medicare federal capital rate, as adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor when applicable and the Medicare geographic adjustment factor as published in the Federal Register. A capital-related payment amount for an out-of-state provider shall exclude:
   1. The Medicare DSH capital adjustment factor;
   2. The Medicare indirect medical education capital adjustment factor;
3. A cost outlier payment shall be made for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.
4. The estimated cost for each discharge shall be calculated by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.
5. The cost outlier payment amount shall be eighty (80) percent of the amount that estimated costs exceed the discharge's outlier threshold.

(2) An acute care out-of-state hospital shall be reimbursed for an inpatient psychiatric service on a fully-prospective per diem basis for the universal rate year beginning on or after April 1, 2003.
(3) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital's psychiatric per diem rate by the number of allowed patient days.
(4) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.
1. The psychiatric operating per diem rate shall be the median operating cost, excluding graduate medical education, per day for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.
2. The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.
3. Reimbursement for a service in an out-of-state rehabilitation hospital shall be determined by multiplying a hospital's rehabilitation per diem rate by the number of allowed patient days.
4. A rehabilitation per diem rate shall be the median rehabilitation per diem rate for all in-state rehabilitation hospitals.
5. Reimbursement for a service in an out-of-state psychiatric hospital shall be determined by multiplying a hospital's psychiatric per diem rate by the number of allowed patient days.
6. The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made under this section.

[Section 13. Upper Payment Limits and Payment Principles. (1) Except as provided in subsection (3) of this section, an acute care hospital with 101 beds or more shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of the hospital's peer group.
(2) Except as provided in subsection (3) of this section, an acute care hospital with 100 beds or less shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem cost of the hospital in its peer group.
(3) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursing days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospital in its peer group.
(4) Except as provided in subsection (5) or (6) of this section, a state university teaching hospital shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem cost of the hospital's peer group.
(5) A state university teaching hospital having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursing days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospital peer group of 401 beds and up.
(6) A pediatric teaching hospital shall have an upper payment limit set at 126 percent of the weighted median per diem cost of its appropriate peer group.
(7) A psychiatric hospital shall:
   a. Except as provided in paragraph (b) or (c) of this subsection, have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in its array;
   b. If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper payment limit set at 116 percent of the weighted median per diem cost for a hospital in its array;
   c. Be exempt from the upper payment limit for its array if designated by the department as a primary referral and service resource for a child in the custody of the cabinet for families and children and be paid at projected actual cost as follows:
      1. Projected actual cost shall be determined by:
         a. The Medicare and Medicaid cost reports supplemented by any expenditures allowed on the Medicaid cost report incurred since the filing of the cost report; and
         b. Projected additional expenditures for the rate year;
         c. Projected additional expenditures for the rate year not subsequently incurred shall be subject to a cost settlement based on actual expenditures allowed on a Medicaid cost report;
      2. The cost determined in subparagraph 1a of this paragraph shall be adjusted for inflation using the DRI index;
   d. If a desk review or audit of the most current cost report is completed after May 1 but prior to the universal rate setting for the
year, the desk review or audited data shall be utilized for rate setting.

(9) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

(10) The payment principles established in this section, Section 2 of this administrative regulation, and the Medicaid Hospital Inpatient Services Reimbursement Manual shall govern reimbursement for an inpatient hospital service.

(11) An array or an upper payment limit shall not be altered after being set by the department.

(12) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper payment limit shall not be established.

(13) A provider tax attributable to Medicaid utilization shall be an allowable cost.

(14) The following limits shall be applied to a per diem rate increase for an acute care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1-1/2) times the DRI inflation amount for the same time period;

(b) A limit shall be applied to the capital and operating cost per diem component;

(c) Rate growth beyond an amount specified in paragraph (a) of this subsection shall be an allowable cost; and

(d) An unallowable cost resulting from the use of a limit established in paragraph (a) of this subsection shall not be included in the base for future rate setting.

Section 14. Payment for an Inpatient Service for a Child Under Age Six (6) Years. For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) year in a disproportionate share hospital, the following shall apply:

(1) For the first thirty (30) days of inpatient service, payment shall be made in accordance with Sections 3, 4, 5, and 22 of this administrative regulation;

(2) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply:

(a) To an inpatient service determined by the department to be medically necessary;

1. Thirty (30) days after the date of admission of a child; or

2. For a newborn, thirty (30) days from the date of discharge of the mother; and

(b) Without regard to length of stay or number of admissions.

Section 15. Acute Care Hospital, Rehabilitation Hospital, Critical Access Hospital, and Psychiatric Hospital Inpatient Rates Effective for State Fiscal Year 2003. (1) The reimbursement rate for the rate year beginning July 1, 2002, for an acute care hospital or a rehabilitation hospital shall be the rate paid on June 30, 2002.

(2) The reimbursement rate for the rate year beginning July 1, 2002, for a critical access hospital shall be in accordance with Section 5 of this administrative regulation.

(3) The reimbursement rate for the rate year beginning July 1, 2002, for a state-owned or operated psychiatric hospital shall be in accordance with Sections 6 through 13 of this administrative regulation.

(4) Excluding a hospital under subsection (3) of this section, the reimbursement rate for the rate year beginning July 1, 2002, for a psychiatric hospital shall be the rate paid on June 30, 2002.

(5) The provisions contained in Sections 3, 4, and 6 through 8 of this administrative regulation shall not be applicable to a rate established in accordance with subsections (1), (2), and (4) of this section.

(6) The provisions contained in Section 14 of this administrative regulation shall be applicable to a rate established in accordance with this section.

Section 22. [16] Supplemental Payments. (1) In addition to a payment based on a rate developed under Section 3, (4, or 16) of this administrative regulation, the department shall make quarterly supplemental payments to:

(a) A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:

1. Equal to the sum of the hospital's Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and

2. prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);

(b) A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:

1. Equal to the difference between payments made in accordance with Sections 3, 4, 5, and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272 (two (2) percent of the base rate for each one (1) percent of Medicaid occupied patient days not to exceed the payment limit as specified in 42 C.F.R. 447.271;

2. That is prospectively determined with no [an] end of the year settlement;

3. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph;

(c) A hospital that qualifies as an urban trauma center hospital in an amount:

1. Based on the state matching contribution made available for this purpose by a governmental entity on behalf of a facility that qualifies under this paragraph;

2. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

3. That is prospectively determined with an end of the year settlement; and

4. That is consistent with the requirements of 42 C.F.R. 447.271;

(d) A hospital that qualifies as a psychiatric access hospital in an amount:

1. Equal to a hospital's uncompensated costs of providing services to Medicaid recipients and individuals not covered by a third party payor, not to exceed $6 million annually; and

2. That is consistent with the requirements of 42 C.F.R. 447.271;

(e) A nonstate government-owned hospital as defined in 42 C.F.R. 447.272(a)(2) that has entered into an intergovernmental transfer agreement with the Commonwealth in an amount equal to the lesser of:

1. The difference between the payments made in accordance with Section 3, (4, or 16) of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.272; or

2. The difference between the payments made in accordance with Section 3, (4, or 16) of this administrative regulation and an amount consistent with the requirements of 42 C.F.R. 447.271; and

(f) A private, nongovernment owned or operated hospital in an amount:

1. Proportional to its Medicaid cost as compared to the total Medicaid costs of all hospitals qualifying under this paragraph;

2. Not to exceed its Medicaid shortfall; and

3. Subject to available funds in accordance with an intergovernmental transfer agreement under paragraph (e) of this subsection and Section 3 of 907 KAR 1:010[d]. Available funds shall be:

a. An amount equal to fifty (50) percent of the payments received by hospitals under paragraph (e) of this subsection after deducting the nonfederal share of the funds, less the total Medicaid shortfall of hospitals participating under paragraph (e) of this subsection; and

b. Matched with federal funds.

4. An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.

(3) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.

(4) A payment made under this section of this administrative regulation shall not duplicate a payment made under Section 23 (4) of this administrative regulation.

(5) A payment made in accordance with subsection (1)(d) and (e) of this section shall be for a service provided on or after April 2,
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2001,
(6) A payment made in accordance with subsection (1)(f) of this section shall be for a service provided on or after November 5, 2001.

(7) A payment made in accordance with this section of this administrative regulation shall be in compliance with the limitations in 42 C.F.R. 447.272.

(8) A supplemental payment for DRGs 365 through 369 shall be made to a hospital with a Level II neonatal center that meets the following qualifications:
(a) Is licensed for a minimum of twenty-four (24) neonatal level II beds;
(b) Has a minimum of 1,500 Medicaid neonatal level II patient days per year;
(c) Has a gestational age lower limit of twenty-seven (27) weeks; and
(d) Has a full-time perinatologist on staff.

Section 23, [17-] Disproportionate Share Hospital Payment. (1) A disproportionate share hospital payment shall be made to a qualified hospital based upon available funds in accordance with KRS 205.640. (1)
(2) For DSH calculation purposes, a per diem used shall be the per diem in effect March 31, 2003.

(3) A payment to a Type I hospital or a Type II hospital shall:
(a) Be a prospective amount;
(b) Be distributed based upon a hospital's proportion of indigent care; and
(c) Not be subject to settlement or revision based on a change in utilization during the year to which it applies.

(4) (3) The cost of indigent care for the purpose of making a payment to a Type I hospital or Type II hospital shall be determined by:
(a) Calculating the costs of inpatient indigent care by multiplying each day of inpatient care provided by the facility by its Medicaid per diem rate on file March 31, 2003 (August 1, 2000); and
(b) Multiplying each facility's inpatient outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25.091. [Calculating the costs of outpatient-indigent care by:
1. Calculating an outpatient-to-inpatient ratio by dividing a hospital's average Medicaid outpatient payment per visit by its average Medicaid inpatient payment per day, and
2. Multiplying the number of outpatient visits by the ratio determined in subparagraph (1) of this paragraph by the facility's Medicaid per diem rate on file as of August 1, 2000.
(4) Effective October 1, 2001, the cost of indigent care for the purpose of making a payment to a Type I or Type II hospital shall be determined by:
(a) Calculating the costs of inpatient indigent care by multiplying each day of inpatient care provided by the facility by its Medicaid per diem rate on file August 1, 2000; and
(b) Multiplying each facility's inpatient outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25.091.]
(5) Distributions to a Type III hospital shall:
(a) Be based on a facility's historical proportion of the costs of services to Medicaid recipients, minus the amount paid by Medicaid under Sections 3, 4, and 18 [14- and 18] of this administrative regulation, plus the costs of services to indigent and uninsured patients minus any payments made on behalf of indigent and uninsured patients;
(b) Be a prospective amount and shall not be subject to settlement or revision based on a change in utilization during the year to which it applies;
(c) Be made on an annual basis; and
(d) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for payment under this subsection.
(6) Distributions to a Type IV hospital shall:
(a) Be equal to the costs of services provided to indigent patients minus any payments made on behalf of an indigent individual;
(b) Be proportionally reduced by the department if the cost exceeds available funds; and
(c) Be made annually.
(7) For payment of service beginning December 2, 2003, a supplemental Medicaid shortfall DSH payment shall be added per paid claim for inpatient hospital services reimbursed in accordance with Section 2 of this administrative regulation.
(a) The supplemental payment shall be in effect until whichever of the following events occurs first:
1. The maximum total amount paid in accordance with this subsection reaches $20 million; or
(b) The supplemental payment shall not apply to:
1. A claim that is paid at a rate of zero dollars;
2. A claim for a psychiatric service; or
3. A claim for a transplant.

Section 24, [18-] Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, Application for Disproportionate Share Hospital Program (DSH-001), to assess a patient's financial situation to determine if:
(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or
(b) A patient meets the indigent care eligibility criteria.
(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance (Medicaid or KCHIP) within thirty (30) days of completing the DSH-001 form at the hospital.

Section 25, [19-] Indigent Care Eligibility Criteria. (1) A hospital shall receive funding for an indigent or outpatient medical service provided to an indigent patient under the provisions of Sections 23 and 24 [17- and 18-] of this administrative regulation if the following apply:
(a) The patient is a resident of Kentucky;
(b) The patient is not eligible for Medicaid or KCHIP;
(c) The patient is not covered by a third-party payor;
(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;
(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:
1. The patient;
2. The patient's spouse;
3. The minor's parent or parents living in the home; and
4. Any minor living in the home;
(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;
(g) Countable resources of a family unit shall not exceed:
1. $2,000 for an individual;
2. $4,000 for a family unit size of two (2); and
3. Fifty (50) dollars for each additional family unit member;
(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and
(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.
(2) Except as provided in subsection (3) of this section, total annual gross income shall be the lesser of:
(a) Income received during the twelve (12) months preceding the month of receiving a service; or
(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4).
(3) A work expense for a self-employed patient shall be deducted from gross income if:
(a) The work expense is directly related to producing a good or service; and
(b) Without it the good or service could not be produced.
(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.
(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6)
months without another determination.

Section 26. [20.] Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 25 [49] of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:
   (a) Review evidence regarding the indigent care eligibility determination;
   (b) Cross-examine witnesses regarding the indigent care eligibility determination;
   (c) Present evidence regarding the indigent care eligibility determination;
   (d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:
   (a) The patient or responsible party who requested the fair hearing; and
   (b) The department.

(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 27. [21.] Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 28. Retrospective Review. (1) A claim paid in accordance with Section 3 of this administrative regulation shall be subject to retrospective review by the OIO.

(2) An amount paid that is found to be in error shall be recouped by the department.

(3) A payment that has been recouped by the department shall be subject to administrative review.

(4) A participating-out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at the lesser of:
   (a) Seventy-five (75) percent of the usual and customary charges, or
   (b) The amount specified in Section 14 of this administrative regulation.

Section 29. [22.] Payment to a Participating-out-of-state Hospital. (1) A participating-out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at the lesser of:
   (a) Seventy-five (75) percent of usual and customary charges, or
   (b) The amount specified in Section 14 of this administrative regulation.

(2) For the universal rate year beginning July 1, 1999, the per diem rate shall be the amount equal to the per diem determined by increasing the per diem determined under subsection (3) of this section, increased by two-tenths (2.8) percent.

(3) For the universal rate year beginning July 1, 1999, the per diem rate shall be the amount equal to the per diem determined under subsection (1) of this section for the universal rate year 1988, by three (3) percent.

(4) For the universal rate year beginning July 1, 2000, the per diem rate shall be the amount equal to the per diem rate determined under subsection (3) of this section, increased by two and eight-tenths (2.8) percent.

(5) For the universal rate year beginning July 2001, the per diem rate shall:
   (a) Be the rate in effect on June 30, 2001; and
   (b) Include operating, capital, and professional component costs.

(6) For the universal rate year beginning July 2002, the per diem rate shall be in accordance with Section 15 of this administrative regulation.

Section 30. [23.] Provider Appeal Rights. (1) Pursuant to 42 C.F.R. 447.253(e), an appeal filed to review an individual hospital's rate shall be limited to the following:
   (a) Increased costs related to allowable inpatient care centers resulting from a capital expenditure requiring a certificate of need;
   (b) Increased costs related to allowable inpatient care centers resulting from a capital expenditure not requiring a certificate of need and meeting a qualifying deeming amount of at least twenty-five (25) percent of its total fixed assets as reported on Worksheet G, Line 21 of its base year Medicare cost report; and
   (c) A mathematical or clerical error by the department. An appeal presented by the provider for a mathematical or clerical error made by the department shall not be required to meet the provisions established in subsection (2) of this section.

(2) The costs that represent the subject matter of an appeal shall increase the current per diem rate by at least five (5) percent in order for any relief to be granted.

(3) An appeal shall follow the review and appeal mechanism established in 907 KAR 1.671, the provisions of KRS Chapter 13B, and Section 113 of the "Medicaid Reimbursement Manual for Hospital Inpatient Services."


(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 November 25, 2003
FILED WITH LRC: December 2, 2003 at 2 p.m.

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 the payment methodology for inpatient hospital services.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the payment methodology for inpatient hospital 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 payment methodology for inpatient hospital services.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the payment methodology for inpatient hospital 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 amends inpatient hospital services by implementing a supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem ba-
s. (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis in order to ensure Medicaid recipient access to psychiatric and rehabilitation services in acute care hospitals.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment, as allowed by statute, enables the Department for Medicaid Services (DMS) to implement a supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by enabling DMS to ensure Medicaid recipient access to psychiatric and rehabilitation services in acute care hospitals.

(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 all acute care hospitals currently reimbursed by DMS on a DRG basis.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of the following administrative regulation, if new, or by the change if it is an amendment: A supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis.

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

(a) Initially: The amendment to this administrative regulation will be budget neutral as funds required to implement the amendment will be transferred from savings projected in the outpatient hospital service program.

(b) On a continuing basis: The amendment to this administrative regulation will be budget neutral as funds required to implement the amendment will be transferred from savings projected in the outpatient hospital service program.

(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 will be used to implement and enforce this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was applied to psychiatric service reimbursement in acute care hospitals. These services are being excluded from budget neutrality adjustments in order to ensure Medicaid recipient access to psychiatric services in acute care hospitals whose ability to provide services would be jeopardized without the budget neutrality adjustment exclusion.

STATEMENT OF EMERGENCY
907 KAR 3:170E

This emergency administrative regulation is being promulgated to establish coverage for telehealth services through the community mental health centers (CMHCS’s). This action must be taken on an emergency basis in order to ensure that Medicaid recipients who otherwise may lack access to psychiatric services have access to these services. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety and welfare of Medicaid recipients who would otherwise lack access to necessary services. 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
Department for Medicaid Services
Division of Physicians and Specialty Services
(Emergency Amendment)

907 KAR 3:170E. Telehealth services and reimbursement.


STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(7), 205.560

EFFECTIVE: December 1, 2003

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer 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. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers. This administrative regulation establishes the coverage provisions relating to telehealth services and the method of determining reimbursement for services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions. (1) "Consultation" means a type of evaluation and management service as defined by Current Procedural Terminology, CPT 2003 [2004] edition or the annual replacement revision upon its adoption by the department.

(2) "CPT code" means a code used for reporting procedures and services performed by physicians and published by the American Medical Association in Current Procedural Terminology, CPT 2003 [2004] edition or the annual replacement revision upon its adoption by the department.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(4) "GT modifier" means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).

(5) "Health care provider" means a

(a) Licensed physician;

(b) [-] Licensed advanced registered nurse practitioner;

(c) [-] Certified physician assistant working under physician supervision;

(d) [-] Licensed dentist or oral surgeon;

(e) Licensed CMHC

(6) [69] "Hub site" means a telehealth site where the medical specialist providing the telehealth service is located and is considered the place of service.

(7) [69] "KenPAC" means the Kentucky Patient Access and Care System.

(8) [73] "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

(9) [69] "Legally authorized representative" means a recipient’s parent or guardian if a recipient is a minor child, or a person having power of attorney for a recipient.

(10) "Licensed community mental health center" or "licensed CMHC" means a facility that provides a comprehensive range of mental health services to recipients of a designated area in accordance with KRS 210.370 to 210.480.

(11) [69] "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907
KAR 3:130.

(12) [(40)] "Medical specialist" means a physician specialist, or an oral surgeon, or a CMHC as specified in Section 4(1) [2(1)] of this administrative regulation.

(13) [(14)] "Spoke site" means a telehealth site where the recipient receiving the telehealth service is located.

[(14) [15]] "Telehealth service" means a medical service provided through advanced telecommunications technology from a hub site to a recipient at a spoke site.

[(15) [(16)] "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 11.550.

(16) [(44)] "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth service.

(17) [(46)] "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time service to take place between a recipient and a telepresentor at the spoke site and a medical specialist at the hub site.

Section 2. Covered Services. (1) Except as restricted in accordance with Section 3 of this administrative regulation, a telehealth service shall be covered if medically necessary.

(2) A telehealth service shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider specified in Section 4(2) of this administrative regulation;

(c) A referral by a recipient's KenPAC PCCM if the comparable non-telehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Limitations. (1) Coverage of telehealth services for a non-CMHC shall be limited to a maximum of four (4) telehealth services per recipient per year if provided as follows in accordance with paragraph (a) or (b) of this subsection:

(a) For a recipient [recipients] age twenty-one (21) years and older, the evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or

(b) For a recipient [recipients] under the age of twenty-one (21) years:

1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and

2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.

(2) Coverage for a telehealth service for a licensed CMHC shall be limited to twelve (12) psychiatric services per recipient per year and shall be billed using the following diagnostic CPT service codes:

1. 90801 for a diagnostic interview examination;

2. 90862 for medication management;

3. 90887 for an outpatient collateral;

4. 90804 for an individual psychotherapy; or

5. 90847 for an outpatient family therapy.

(3) Coverage shall not be provided for a service that requires face-to-face contact with a recipient in accordance with 42 C.F.R. 447.571.

Section 4. Eligible Providers. (1) A [The] medical specialist at a [the] hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR 1:671 and 907 KAR 1:672 and shall be:

(a) For a non-CMHC a licensed physician in one (1) of the following specialties or subspecialties:

1. Dermatology;

2. Emergency medicine;

3. An internal medicine subspecialty;

4. General surgery or a surgery subspecialty;

5. Neurology;

6. Obstetrics and gynecology;

7. A pediatric subspecialty;

8. Psychiatry; [or]

9. Radiology or radiation medicine; or

10. [6b] A licensed oral surgeon; or

(b) For a licensed CMHC:

1. A psychiatrist; or

2. An advanced registered nurse practitioner.

(2) A [The health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision; [or]

(d) Licensed dentist or oral surgeon; or

(e) A licensed CMHC.

Section 5. Reimbursement. (1) The department shall reimburse a medical specialist located at a [the] hub site for a telehealth service:

(a) An amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010; or

(b) if a licensed CMHC, in accordance with 907 KAR 1:045.

(2) A medical specialist shall bill for a service using the appropriate evaluation and management CPT code as specified in Section 4 of this administrative regulation with the addition of the two letter "GT" modifier.

(3) The department shall not require the presence of a [the] health care provider requesting a [the telehealth service at the time of the telehealth service unless it is requested by a [the] medical specialist at the hub site.

(4) Reimbursement shall not be made for transmission costs.

Section 6. Confidentiality and Data Integrity. (1) [Confidentiality laws and other requirements that apply to written medical records shall apply to electronic medical records and telehealth services.]

(2) A telehealth service shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth service information.

(3) [(5) [6b]] Both a [the] hub site and a [the] spoke site shall use authentication and identification to ensure the confidentiality of a [the] telehealth service.

(4) [(6) [44]] A provider of a telehealth service shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(5) [(5) [55]] A provider's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent. (1) Before providing a telehealth service to a recipient, a [the] health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth service at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth service that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth service as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth service shall not occur without the written informed consent of the recipient or the recipient's legally-authorized representative;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth service and shall have the right to exclude anyone from either site; and
(f) The recipient shall have the right to object to the video taping of a telehealth service.
(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.
(3) The requirement to obtain informed consent before providing a service shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.

Section 8. Medical Records. (1) A request for a telehealth service from a physician or other health care provider specified in Section 42 of this administrative regulation and the medical necessity for the telehealth service shall be documented in the recipient's medical record.
(2) A health care provider shall keep a complete medical record of a telehealth service provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.090, 422.317, 434.840 – 434.860, and 42 C.F.R. 431 Subpart F.
(3) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1:672.
(4) Documentation of a [the] telehealth service by the referring health care provider shall be included in the recipient's medical record and shall include:
(a) The diagnosis and treatment plan resulting from the telehealth service and a progress note by the referring health care provider if present at the spoke site during the telehealth service;
(b) The location of the hub site and spoke site;
(c) A copy of the signed informed consent form; and
(d) Documentation supporting the medical necessity of the telehealth service.
(5) A [The] medical specialist's diagnosis and recommendations resulting from a [the] telehealth service shall be documented in the recipient's medical record at the recipient's location. The medical specialist shall send a written report to the referring health care provider.

Section 9. Appeal Rights. (1) An appeal of a [negative action taken by the] department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.
(2) An appeal of a [negative action taken by the] department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.
(3) A provider,方可 appeal a department decision as to the application of this administrative regulation [An appeal of a negative action taken by the department regarding a Medicaid provider shall be] in accordance with 907 KAR 1:571.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: November 20, 2003
FILED WITH LRC: December 1, 2003 at 11 a.m.

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 the provisions for coverage and reimbursement for telehealth services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 205.559.
(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 a method for reimbursing for telehealth services and limitations on coverage.
(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 providing a method for the reimbursement for services provided by way of telehealth technology.
(2) If 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 allow community mental health centers (CMHC) to provide services to Medicaid recipients via telehealth technology.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to allow CMHC's to provide Medicaid recipients access to services in rural areas.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment will assist in the effective administrative regulation of the authorizing statutes by ensuring that Medicaid recipients in rural areas have access to CMHC services via telehealth technology in accordance with KRS 205.559.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administrative regulation of the authorizing statutes by ensuring that Medicaid recipients in rural areas have access to CMHC services via telehealth technology in accordance with KRS 205.559.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients needing CMHC services and enrolled in-state Medicaid physician specialists providing consults and psychotherapy through established telehealth networks.
(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: Recipients in rural areas will now have access to psychiatric services without having to travel to urban access areas.
(5) Provide an estimate of how much it will cost to implement this administrative regulation.
(a) Initially: The amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.
(b) On a continuing basis: The amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.
(c) 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 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 amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fees.
(9) Tiering: Is tiering applied? The amendment to this administrative regulation enables CMHC's to now also provide services via telehealth technology in accordance with KRS 205.559, thus, enhancing recipient access to CMHC services.

STATEMENT OF EMERGENCY
921 KAR 2:015E

The administrative regulation 921 KAR 2:015E, Supplemental programs for persons who are aged, blind or have a disability, changes the standards for all levels of care for the State Supplemental Program due to the federal and state agreements to pass through the Supplemental Security Income 2004 cost of living increase. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of
living increases in Supplemental Security Income benefits to state supplementation recipients. Failure of a state to comply with an agreement jeopardizes the state’s Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified this agency of the amount of the Supplemental Security Income cost of living adjustment in October 2003. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standard effective January 1, 2004. In order to effectuate the payment revisions, computer system changes must be implemented in December 2003. Therefore, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.245, 42 U.S.C. 1382c-e
EFFECTIVE: December 8, 2003

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973 and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind or had a disability.
(2) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.
(3) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.
(4) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.
(5) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled him to an Aid to the Aged, Blind and Disabled program as of December 1973.
(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.
(3) A mandatory state supplementation payment shall be equal to the difference between:
(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973; and
(b) The total of the Supplemental Security Income Program payment; or
(c) The total of the Supplemental Security Income Program payment and other income for the current month.
(4) A mandatory payment shall discontinue when:
(a) The needs of the recipient as recognized in December, 1973, have decreased; or
(b) Income has increased to the December, 1973 level.
(5) The mandatory payment shall not be increased unless:
(a) Income as recognized in December, 1973, decreases;
(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or
(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.
(6) If a husband and wife are living together, an income change after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with 907 KAR 1:011, Sections 1(3), 1(5), 1(6), 1(7), 1(13), 10, and 11, 907 KAR 1:640, Sections 1(1), 6(1), 6(7), 10, 3(4), 907 KAR 1:645, 907 KAR 1:650, Section 1(5), and 907 KAR 1:660, Sections 1(1), 5(1), 2(1), 2(2), (3), 4(2).
(2) A person applying for or receiving state supplementation shall be required to:
(a) Furnish a Social Security number; or
(b) Apply for a Social Security number, if a Social Security number has not been issued.
(3) If potential eligibility exists for a Supplemental Security Income Program, an application for the Supplemental Security Income Program shall be mancatory.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be made to an eligible individual who:
(a) Requires a full-time living arrangement; and
(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation.
(2) A full-time living arrangement shall include:
(a) Residence in a personal care home that:
1. Meets the requirements and provides services established in 902 KAR 20:036; and
2. Is licensed under KRS 216.010 to 216B.131; or
(b) Residence in a family care home that:
1. Meets the requirements and provides services established in 902 KAR 20:0411; and
2. Is licensed under KRS 216.010 to 216B.131; or
(c) A situation in which a caretaker is required to be hired to provide care other than room and board.
(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall return the check to the Kentucky State Treasurer, the month after the month of:
(a) Discharge to a:
1. Nursing facility;
2. Residence; or
(b) Death of the state supplementation recipient.
(4) Failure to comply with subsection (3) of this section may result in prosecution in accordance with KRS Chapter 514.
(5) If no guardian or other payee, a personal care or family
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care home that receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the
month after the month of:
1. Discharge to a:
   a. Nursing facility;
   b. Another personal care or family care home;
   c. Residence; or
2. Death of the state supplementation recipient; and
(b) Notify a local county Department for Community Based
Services Office within five (5) working days of the:
1. Death, or discharge of the state supplementation recipient;
or
2. Voluntary relinquishment of a license to the Cabinet for
Health Services, Office of Inspector General.
(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)(2) of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.
(7) Failure to comply with subsections (5)(a) and (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable the individual with an illness or infirmity to:
(a) Remain safely and adequately:
1. At home;
2. In another family setting; or
3. In a room and board situation; and
(b) Prevent institutionalization.
(2) A service by a caretaker shall be made at regular intervals by:
(a) A live-in attendant; or
(b) One (1) or more persons hired to come to the home.
(3) Eligibility for caretaker supplementation shall be verified by the cabinet with the caretaker to establish how:
(a) Often the service is provided;
(b) The service prevents institutionalization; and
(c) Payment is made for the service.
(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:
(a) Client is taken daily or periodically to the home of the caretaker;
or
(b) Caretaker service is provided by the following persons living with the applicant:
   1. The spouse;
   2. Parent of an adult or minor child who has a disability; or
   3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in the section, countable resources shall be determined according to policies for the medically needy in accordance with 907 KAR 1:840, Sections 1(1), (5), (7), (10), 3(4), 907 KAR 1:845, 907 KAR 1:850, Section 1(5), and 907 KAR 1:860, Sections 1(1), (5), 2(1), (2), (3), (4).
(2) An individual or couple shall not be eligible if countable resources exceed the limit of:
(a) $2000 for individual; or
(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with 907 KAR 1:840, Sections 1(1), (5), (7), (10), 3(4) 907 KAR 1:845, 907 KAR 1:850, Section 1(5), and 907 KAR 1:860, Sections 1(1), (5), 2(1), (2), (3), (4).
(2) The optional supplementation payment shall be determined by:
(a) Adding:
   1. Total net income of the applicant or recipient, or applicant or recipient and spouse;
   2. A payment made to a third party in behalf of an applicant or recipient; and
   (b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.
(3) Income of an ineligible spouse shall be:
(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:
   1. Himself; and
   2. Each minor dependent child.
(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.
(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
(6) The earnings of an eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.
(8) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.
(9) For a resident in the Elder Shelter Network Program:
(a) Income and resources of the spouse shall be disregarded for the month of separation; and
(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:
(a) A resident of a personal care home made on or after January 4, 2004, $1,004 [2003, $992];
(b) A resident of a family care home made on or after January 1, 2004, $738 [2003, $724]; or
(c) Caretaker:
   1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2004, $525 [2003, $514];
   2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2004, $915 [2003, $898]; or
   3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2004, $861 [2003, $944].
(2) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need. One-half (1/2) of the deficit shall be payable to each.
(3) A personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.
(4) The standards as specified in subsection (1)(a) through (c) of this section shall be effective January 1, 2004.

Section 9. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical confinement if:
(a) Admitted to a:
   1. Hospital;
   2. Psychiatric hospital; or
   3. Nursing facility;
(b) A recipient's physician certifies the recipient is expected to be medically confined for ninety (90) full consecutive days or less; and
(c) The recipient receives benefits from the Supplemental Security Income Program.
(2) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:
(1) Citizen of the United States; or
(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) To the extent funds are available, a personal care home may qualify for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in their care as of the first calendar day of a qualifying month and shall meet the following certification criteria:
(a) Be licensed in accordance with KRS 216B.010 to 2168.131;
(b) Care for a resident who has a:
1. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;
2. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
3. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
(c) Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds;
(d) Not be eligible for a payment during the days it received a Type A citation in accordance with KRS 216.595(1) by the Office of Inspector General;
(e) Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
(f) Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of minimum requirement; and
(g) File an "Application for MI or MR Supplement Program Benefits" with the Department for Community Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter:
1. Quarterly shall begin in January, April, July and October.
2. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the Department for Community Based Services with its tax identification number and address as part of the application process.

(3) The Department for Community Based Services shall provide a "Notice of Decision to Personal Care Home" to a personal care home following approval or denial of an application.

(4) A personal care home shall Provide the Department for Community Based Services with a "Monthly Report Form".

(a) The report shall list:
1. Every resident of the personal care home who was a resident on the first day of the month; and
2. The resident's Social Security number.
(b) In order to maintain confidentiality, a personal care home shall annotate the monthly report as follows with a:
1. Star indicating a resident has a mental illness or mental retardation diagnosis;
2. Check mark indicating a resident receives state supplementation; and
3. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.
(c) The monthly report shall be used for:
1. Verification;
2. Payment; and
3. Audit purposes;
(d) The monthly report shall be postmarked to the Department for Community Based Services by the fifth working day of the month.

(5) A personal care home shall notify the Department for Community Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.
(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:
(a) Importance of proper medication administration;
(b) Side effects and adverse medication reactions with special attention to psychotropics;
(c) Signs and symptoms of an acute onset of a psychiatric episode;
(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;
(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation;
(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:
(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and
(b) Be in the quarter during which the "Application for MI or MR Supplement Program Benefits" is filed with the Department for Community Based Services.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community Based Services an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:
1. Has received mental illness or mental retardation basic training; or
2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Cabinet for Health Services, Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.
(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.
(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.
(d) Attendance of an advanced level training workshop shall be optional.

(6) The Cabinet for Health Services, Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:
(a) A certificate to direct care staff who complete the workshop;
(b) A listing to the Department for Community Based Services of staff who completed the training workshop.

(7) Unless staff turnover occurs a specified in subsection (4)(a) of this section, the Department for Community Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Cabinet for Health Services, Office of the Inspector General, shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:
1. May be separate from an annual survey; and
2. Shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(b) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be completed during the annual licensure survey; and

(c) The Department for Community Based Services shall notify the Cabinet for Health Services, Office of Inspector General that the personal care home is ready to be certified.

(2) The Cabinet for Health Services, Office of Inspector General, shall:

(a) Observe and interview residents and staff during the certification process; and

(b) Review records to assure the following criteria is met:
1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (3) of this administrative regulation, provided by the Department for Mental Health and Mental Retardation Services.

2. The personal care home's certified staff is training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff;

3. An activity is being regularly provided and meets the needs of a resident.
   a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

   b. An individualized care plan shall not be required to meet this criteria.

4. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.

(3) The Cabinet for Health Services, Office of Inspector General, shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the Department for Community Based Services, within ten (10) working days.

(6) The cabinet shall receive from the Cabinet for Health Services, Office of Inspector General, a completed "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within five (5) working days of receipt by the Cabinet for Health Services.

(7) The Cabinet for Health Services, Office of Inspector General, shall inform the Department for Community Based Services of a personal care home that receives a Type A citation:
(a) Monthly; and
(b) By the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the Cabinet for Health Services, Office of Inspector General, established in 921 KAR 2:050.

(9) If a criteria for certification is not met, a "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the Cabinet for Health Services, Office of Inspector General.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Notice of Decision to Personal Care Home, edition 3/99";
(b) "Monthly Report Form, edition 3/99";
(c) "Application for MI or MR Supplement Program Benefits, edition 3/99"; and
(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey, edition 3/99".

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

VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: December 8, 2003 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, Coordinator, (502) 564-3556
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care family care home or receiving caretaker services in accordance with KRS 205.254.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplement Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.254 by complying with an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to state supplementation recipients.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the State Supplementation Program. It establishes eligibility requirements and payment standards for the State Supplementation Program for personal care, family care and caretaker 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 will change the standard of need for all levels of care for the State Supplementation Program due to the pass along of the 2004 Supplemental Security Income cost of living adjustment.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation due to the mandated pass along of the 2004 Supplemental Security Income cost of living increases for eligibility determinations made on or after January 1, 2004.
(c) How the amendment conforms to the content of the
authorizing statutes: The amendment to this administrative regulation conforms to KRS 205.245 by complying with an agreement with the Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to state supplementation recipients.

(d) How the amendment will assist in the effective administration of the statute: This amendment changes the standard of payments for all levels of care for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2003, there were approximately 4,651 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandate cost of living adjustment. There are approximately 204 personal care homes and 162 family care homes. The increased standard will help cover the cost of care for the aged, blind and disabled residing in personal care and family care homes and help prevent them from being institutionalized.

(4) Provide an assessment of how the above group of groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Kentucky entered into a binding agreement with the federal government to maintain a supplemental program on September 21, 1977. Failure to maintain this program will result in Kentucky becoming ineligible for Medicaid payments under Title XIX of the SSA in accordance with 20 C.F.R. 416.2099. The State Supplementation Program, although 100% general funds, is extremely cost effective for Kentucky. The average monthly cost is $335 to maintain aged and disabled individuals in personal care homes, family care homes, or in their own home. The cost of providing personal care services in a nursing facility setting funded by Medicaid is approximately $35,000 vs. $4,000 for state supplementation per year. In addition, the elimination or reduction of community placements funded by state supplementation could jeopardize Kentucky’s compliance with the Federal Olmstead Court decision.

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

(a) Initially: There will be a cost of $189,700 for the first year to the Cabinet for Families and Children to implement the mandated pass along of the 2004 SSI cost of living increase. This increase was included in the cabinet SFY 2004 enacted budget.

(b) On a continuing basis: There will be a cost of $379,400 to the Cabinet for Families and Children on a continuing basis to implement the mandated pass along of the 2004 SSI cost of living increases.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The annual pass through of the SSI cost of living increase is absorbed within the existing state supplementation budget.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied since application of policy is applied in a like manner for all state supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. 416.2095 and 20 C.F.R. 416.2096
2. State compliance standards. This amended administrative regulation includes the 2004 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guidelines.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in Supplemental Security Income benefits to state supplementation recipients.

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.
EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 10, 2003)

16 KAR 3:010. Certification for school superintendent.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020

requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(b) requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school superintendent.

Section 1. Conditions and Prerequisites. (1) The professional certificate for instructional leadership - school superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by this administrative regulation and pursuant to 16 KAR 5:010;
(b) The appropriate requirements for certification, as established in KAR Title 16; and
(c) At least two (2) years of experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of districtwide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

(2) The professional certificate for instructional leadership - school superintendent shall be valid for the position of school superintendent and assistant superintendent.

(3) Prerequisites for the program of preparation for the professional certificate for instructional leadership - school superintendent shall include:

(a) Qualifications for a Kentucky teaching certificate;
(b) Admission to the preparation program on the basis of criteria developed by the teacher education institutions pursuant to 16 KAR 5:010;
(c) Completion of a master's degree;
(d) 1. Except as provided in subparagraph 2 of this paragraph, completion of the Levels I and II preparation and certification for the position of school principal, or supervisor of instruction; or
2. For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration; and
(e) Completion of at least three (3) years of full-time teaching experience, including at least 140 days per year.

Section 2. A preparation program for the professional certificate for instructional leadership - school superintendent shall be consistent with the six (6) standards included in " Interstate School Leaders Licensure Consortium Standards for School Leaders" and the six (6) standards included in "Technology Standards for School Administrators" found in 16 KAR 3:050, Section 3, and incorporated by reference.

Section 3. Issuance and Renewal. (1) The initial professional certificate for instructional leadership - school superintendent shall be issued for five (5) years to a candidate who has completed an approved program of preparation for superintendent at the post-master's level. Application shall be made on Form TC-1.

(2) Each five (5) year renewal shall require:

(a) The completion of two (2) years of experience as a school superintendent or assistant superintendent;
(b) Three (3) semester hours of additional graduate credit or the equivalent related to the position of school superintendent;
(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) If a lapse in certification occurs for lack of the renewal requirements, the certificate shall be reissued for a five (5) year period after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

Section 4. Implementation Dates. (1) The provisions for the issuance of the certification for school superintendent shall apply to a candidate admitted to a program of preparation for school superintendent beginning September 1, 1998.

(a) A candidate admitted prior to September 1, 1998, to an approved program of preparation for school superintendent shall complete the program by September 1, 2000.
(b) A candidate who fails to complete an approved preparation program for school superintendent by September 1, 2000, and who does not apply for certification by May, 2001 shall be required to qualify for the new certificate identified in this administrative regulation.

(2) Colleges and universities shall take adequate steps to inform a candidate in these programs regarding the implementation dates established in this section.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) " Interstate School Leaders Licensure Consortium Standards for School Leaders", November 2, 1996; [is incorporated by reference.]
(b) "Form TC-1, rev. 1992, and [1/99]." is incorporated by reference.
(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators [is incorporated by reference.]

(2) This material may be inspected, copied, or obtained subject to applicable copyright laws, at the Education Professional Standards Board, 100 Airport Road, Third Floor (1024-Capitol Center Drive), Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: September 22, 2003
FILED WITH LRC: October 14, 2003 at 2 p.m.
CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 10, 2003)

16 KAR 3:020. Certification for supervisor of instruction.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020

requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for supervisor of instruction at all grade levels.
Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of supervisor of instruction.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of supervisor of instruction.

Section 2. (1) The professional certificate for instructional leadership - supervisor of instruction, shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.

(2) As prerequisites for the Level I program of preparation for the initial professional certificate for instructional leadership - supervisor of instruction, the candidate shall:

(a) Have been admitted to a preparation program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010;

(b) Have completed three (3) years of full-time teaching experience;

(c) Have completed the master's degree; and

(d) Qualify for a Kentucky teaching certificate.

(3) Application for the professional certificate for instructional leadership - supervisor of instruction shall be made on Form TC-1.

(a) The initial professional certificate for instructional leadership - supervisor of instruction shall be:

(i) Issued for a duration period of five (5) years upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010; and

(ii) Renewed subsequently for five (5) years.

1. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010.

2. Each five (5) year renewal thereafter shall require the completion of:

(a) Two (2) years of experience as a supervisor of instruction;

(b) [Or] Three (3) semester hours of additional graduate credit or the equivalent related to the position of supervisor of instruction;

(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(5) If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

Section 3. Graduate level credit earned in the Level I and Level II preparation programs identified in Section 1 of this administrative regulation shall be eligible for consideration in Rank I certification pursuant to 16 KAR 8:010, "Plan I" or "Plan II."

Section 4. A preparation program for the professional certificate for instructional leadership - supervisor of instruction shall be consistent with the six (6) standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and the six (6) standards included in "Technology Standards for School Administrators" found in 16 KAR 3:050, Section 3, and incorporated by reference.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders", November 2, 1996; [i incorporated by reference.]

(b) "Form TC-1, rev. 10/02; and [t incorporated by reference.]

(c) "Technology Standards for School Administrators", 2001.

Collaborative for Technology Standards for School Administrators [is incorporated by reference.]

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor [1024 Capital Center Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: September 22, 2003
FILED WITH LRC: October 14, 2003 at 2 p.m.
CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 10, 2003)

16 KAR 3:030. Professional certificate for directors and assistant directors of pupil personnel [and assistants].

RELATES TO: KRS 159.080, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for directors of pupil personnel services, and establishes the requirements for a probationary certificate if [when] a person holding certificate for director of pupil personnel services is not available.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of director and assistant director of pupil personnel [and assistants].

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of director or assistant director pupil personnel [and assistants].

(3) "Qualified applicant" means an applicant who holds the appropriate certification as a director of pupil personnel services unless the superintendent of the employing school district has documented evidence that the applicant is unsuitable for appointment.

Section 2. (1) The professional certificate for director of pupil personnel services shall be issued in accordance with the pertinent Kentucky statutes and this administrative regulation to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.

(2) As prerequisites for the Level I program of preparation for the initial professional certificate for director of pupil personnel services, the candidate shall:

(a) Have been admitted to a preparation program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010;

(b) Have completed three (3) years of full-time teaching experience;

(c) Have completed the master's degree; and

(d) Qualify for a Kentucky teaching certificate.

Section 4. A preparation program for the professional certificate for director of pupil personnel services shall be made on Form TC-1.

(a) The initial professional certificate for director of pupil personnel services shall be:

(i) Issued for a duration period of five (5) years upon the successful completion of a Level I program approved by the Education
Professional Standards Board pursuant to 16 KAR 5:010; and
[9] [end shall be] Renewed subsequently for five (5) year periods.
1. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010.
2. Each five (5) year renewal thereafter shall require the completion of:
   a. Two (2) years of experience as a director of pupil personnel services;
   b. [or] Three (3) semester hours of additional graduate credit or the equivalent related to the position of director of pupil personnel services; or
   c. [or] Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Leadership Training Program provided in KRS 156.101.
(5) If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

Section 3. Graduate level credit earned in the Level I and Level II preparation program identified in Section 2 of this administrative regulation shall be eligible for consideration of Rank I classification pursuant to 16 KAR 6:010; "Plan I" or "Plan II."

Section 4. (1) If a qualified applicant for director of pupil personnel services is not available as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate for a director of pupil personnel services who has [meets the following qualifications]:
   a. A valid Kentucky classroom teaching certificate;
   b. A master's degree;
   c. Three (3) years of successful teaching experience; and
   d. Been admitted [Admission] to the preparation program for the professional certificate for director of Pupil Personnel Services.
(2) Application for the one (1) year probationary certificate for a director of pupil personnel services shall be made on Form TC-40.
(3) Each renewal of the probationary certificate for director of pupil personnel services shall require completion of an additional nine (9) semester hours selected from the approved program.

Section 5. A preparation program for the certificate for director of pupil personnel services shall be consistent with the six (6) standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and the six (6) standards included in "Technology Standards for School Administrators" found in 16 KAR 3:050, Section 3, and incorporated by reference.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
   b. "Form TC-1, rev. 10/02"; [11/09][is incorporated by reference.]
   c. "Form TC-40, rev. 10/03"; and [08/00][is incorporated by reference.]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor [4024–Capital Center Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
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(b) [shall be] Renewed subsequently for five (5) year periods.

1. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010.

2. Each five (5) year renewal thereafter shall require the completion of:
   a. Two (2) years of experience as a director of special education;
   b. [or] Three (3) semester hours of additional graduate credit or the equivalent related to the position of the director of special education; or
   c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program provided in KRS 155.101.

3. If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

4. Graduate level credit earned in the Level I and Level II preparation programs identified in this section shall be eligible for consideration of Rank I certification pursuant to 16 KAR 8:010, "Plan I" or "Plan II."

Section 3. [(1)] All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level shall be required to hold one (1) of the following:

1. [a] The endorsement for director of special education;
2. [b] The professional certificate for director of special education;
3. [c] The endorsement for supervisor of special education;
4. [d] The endorsement for teacher consultant for special education;
5. [e] A certificate valid for supervisor of instruction persons serving in that position such positions on July 14, 1992, as provided by KRS 157.250; or
6. [f] A valid certificate possessing the code ADSE for approval of director of special education.

2. Persons who hold a certificate valid for supervisor of instruction and were appointed after July 14, 1992, and until September 1, 1996, shall comply with the requirements of Section 5 of this administrative regulation.

Section 4. (1) If a qualified applicant is not available for the position of director of special education, the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) year period for an applicant who has met the following qualifications:

(a) A valid Kentucky certificate for teachers of exceptional children;
(b) Rank II certification;
(c) Three (3) years of full-time experience teaching exceptional children;
(d) Completed [Completion of a course in special and regular education case law; and
(e) Been admitted [Admission] to the preparation program for the professional certificate for director of special education.

2. Application for the two (2) year certificate for a director of special education shall be made on Form TC - 28.

3. The applicant shall complete the total curriculum for the professional certificate for director of special education by September 1 of the year of expiration.

Section 5. Persons employed after July 14, 1992, and until September 1, 1995, by a local school district in an assignment which includes supervising, directing, administering, or coordinating special education programs at the district-wide level, and who hold a valid certificate for supervision of instruction shall be issued a one (1) year Professional Certificate for Director of Special Education under the following conditions:

1. The individual shall provide evidence of being enrolled in a program of preparation approved by the Education Professional Standards Board pursuant to 16 KAR 5:010 and in addition, coursework which includes special education instructional methods, materials and programs including preschool-special education.

2. The one (1) year Professional Certificate for Director of Special Education may be renewed for additional one (1) year periods on completion by September 1 of the year of expiration of nine (9) semester hours selected from subsection (1) of this section.

3. On completion of the program of preparation outlined in subsection (1) of this section the certificate shall be extended for the remainder of the usual five (5) year duration period and renewed in keeping with Section 2(5) of this administrative regulation.

Section 6. A preparation program for the professional certificate for director of special education shall be consistent with the six (6) standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and the six (6) standards included in "Technology Standards for School Administrators" found in 16 KAR 3:050, Section 3, and incorporated by reference.

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

(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders" November 2, 1998;
(b) "Form TC-1, rev. 10/02" [is incorporated by reference];
(c) "Form TC-28, rev. 10/02"; and [08/00] [is incorporated by reference];
(d) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators" [is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor [4024 - Capital Center Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: September 22, 2003
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 10, 2003)

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of study designed for minimal preparation to serve in the position of instructional leadership - school principal.

(2) "Level II" means the standards-based program of study to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.
Section 2. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;

(b) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with the Interstate Agreement on Qualification of Educational Personnel; and

(c) Successful completion of the Kentucky Teacher Internship Program, as provided in 16 KAR 7:010, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 3. Kentucky Administrator Standards for Preparation and Certification. (1) The approved program of preparation for the provisional certificate for instructional leadership - school principal shall:

(a) Include a master's degree in education; and

(b) [1] Be designed to:

1. Address recommendations of relevant professional organizations including:

a. The National Policy Board for Educational Administration;

b. The University Council for Educational Administration;

c. The National Council of Professors of Educational Administration;

d. The National Association of Secondary School Principals;

e. The Collaborative for Technology Standards for School Administrators; and

f. [1-and-to] The American Association of School Administrators; and

[2. [and-to] Prepare a candidate for the position of School Principal as specified in the standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and "Technology Standards for School Administrators."

(2) [1] The Interstate School Leaders Licensure Consortium Standards for School Leaders [standards] are as follows:

(a) [1] School leader standard 1. A school administrator is an instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(b) [2] School leader standard 2. A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(c) [3] School leader standard 3. A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) [4] School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) [5] School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and

(f) [6] School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding and responding to, and influencing the larger political, social, economic, legal, and cultural context.

(3) [2] The Technology Standards for School Administrators are as follows:

(a) Technology standard 1. Leadership and vision. Educational leaders inspire a shared vision for comprehensive integration of technology and foster an environment and culture conducive to the realization of that vision.

(b) Technology standard 2. Learning and teaching. Educational leaders ensure that curricular design, instructional strategies, and learning environments integrate appropriate technologies to maximize learning and teaching.

(c) Technology standard 3. Productivity and professional practice. Educational leaders apply technology to enhance their professional practice and to increase their own productivity and that of others.

(d) Technology standard 4. Support, management, and operations. Educational leaders ensure the integration of technology to support productive systems for learning and administration.

(e) Technology standard 5. Assessment and evaluation. Educational leaders use technology to plan and implement comprehensive systems of effective assessment and evaluation.

(f) Technology standard 6. Social, legal, and ethical issues. Educational leaders understand the social, legal, and ethical issues related to technology and model responsible decision-making related to these issues.

Section 4. Assessment Procedures for the Provisional Certificate for Instructional Leadership - School Principal. [1] An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on the assessments required by 16 KAR 6:030, [each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) For an applicant applying for a certificate under KRS 161.027(6)(b), the superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

Section 5. Statement of Eligibility for Internship. (1) A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

(2) Application shall be made on Form TC-1.

Section 6. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 16 KAR 7:020.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

(a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or

(b) If the applicant has not successfully completed the two (2) years of experience; 1. [1] Completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed;
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, December 10, 2003)

16 KAR 8:030. Examination prerequisites for principal certification.

RELATCG TO: KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.027
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. KRS 161.030 sets certification with the Education Professional Standards Board. This administrative regulation establishes the examination requirements [specifies the prerequisite tests, minimum scores for successful completion, and establishes a reasonable fee for administration of the prerequisite tests] for certification as principal required under KRS 161.027.

Section 1. (1) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An [Until October 1, 1999, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:
(1) NTE Speciality Test of Educational Administration and Supervision – 540; and
(2) Kentucky Specialty Test of Instructional Responses and Administrative Practices – eighty-five (85) percent correct responses.

Section 3. Beginning on October 1, 1999, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:
(1) School Leaders Licensure Assessment established - 155; and
(2) Kentucky Specialty Test of Instructional and Administrative Practices – eighty-five (85) percent correct responses.

Section 4. [4.] (1) An applicant for certification as principal shall take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board [Kentucky Department of Education] by the ETS.

(2) An applicant for certification as principal shall [may] take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Education Professional Standards Board [Kentucky Department of Education]. Scoring and reporting of scores shall be the responsibility of the Education

LYDIA COFFEY, Chair
APPROVED BY AGENCY: September 22, 2003
FILED WITH LRC: October 14, 2003 at 2 p.m.

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Section 5. [67] (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the ETS. 
(2) For the Kentucky Specialty Test of Instructional and Administrative Practices, and applicant shall pay a fee of:
(a) Thirty (30) dollars if the test is taken before September 1, 2004; or
(b) Eighty (80) dollars if the test is taken on or after September 1, 2004.

Section 6. [77] An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. [87] A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. [97] (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.
(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.
(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. [107] (1) To provide for confidentiality of information, the Education Professional Standards Board [Kentucky Department of Education] shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.
(2) A score shall not be used by the Education Professional Standards Board [Kentucky Department of Education] in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. [117] On an annual or biennial basis, the Education Professional Standards Board [Kentucky Department of Education] shall collect and analyze data provided by the Educational Testing Service through-score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

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(2) Vendors shall:
(a) Report sales to a TP DPA holder on Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return", (July 2003); and
(b) Take a corresponding deduction Code 190 on the return and identify the deduction as "TP DPA Sales".

Section 5. Transfer of Authorization: (1) A TP DPA shall not be transferable upon the sale, lease, or other transfer of the business.
(2) A TP DPA holder shall notify the cabinet within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 6. Termination. (1) The cabinet shall terminate a TP DPA if the holder:
(a) Fails or ceases to be an eligible taxpayer;
(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or
(c) Fails to comply with any of the provisions of this administrative regulation.
(2) The cabinet shall notify a TP DPA holder of the termination by certified mail at the last known business address.
(3) Upon receipt of the notification of termination, a TP DPA holder shall notify all truck repair and replacement part vendors within thirty (30) days of the date of termination.
(4) The effective date of the termination shall be the date of the mailing of the termination notice.

Section 7. Protests. The denial or termination of a TP DPA may be protested pursuant to KRS 131.110.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Sales and Use Tax Return", Form 51A102 (July 2003);
(b) "Consumer's Use Tax Return", Form 51A113 (July 2003);
(c) "Application for Truck Part Direct Pay Authorization", Form 51A160 (October 2003);
(d) "Truck Part Direct Pay Authorization", Form 51A161 (October 2003); and
(e) "Truck Part Direct Pay Authorization (TP DPA) Purchase Report", Form 51A162 (October 2003).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

DANA BYNUM MAYTON, Secretary
APPROVED BY AGENCY: October 15, 2003
FILED WITH LRC: October 15, 2003 at noon
CONTACT PERSON: Edward A. Mattingly, Tax Consultant, Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.

STATE BOARD OF LICENSURE OF MARRIAGE AND FAMILY THERAPISTS
(As Amended at ARRS, December 10, 2003)

201 KAR 32:010. Definitions for 201 KAR Chapter 32

RELATES TO: KRS 335.330 [335.300]
STATUTORY AUTHORITY: KRS 335.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399 [335.330 requires the requirements for licensure as a marriage and family therapist. The board is required to review the applications of applicants for licensure. In addition to other requirements, KRS 335.330 requires applicants to have experience under supervision]. This administrative regulation establishes definitions for 201 KAR Chapter 32 [necessary for the evaluation of experience under supervision].

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:
(a) A marriage and family therapy course, designated by a marriage and family therapy course title or content, beyond the undergraduate level; or
(b) An academic course, relevant to marriage and family therapy, beyond the undergraduate level. General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.
(2) "Approved" means recognized by the Kentucky Board of Licensure of Marriage and Family Therapists.
(3) "Approved supervisor" means an individual who:
(a) Holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy; or
(b) Is licensed as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy, eighteen (18) months of which shall be as a therapist licensed in the Commonwealth of Kentucky.
(4) "Clinical supervision" means the direct face-to-face interaction between the supervisor and supervisee which utilizes [process of utilizing] a partnership aimed at enhancing the professional development of supervisees in providing marriage and family therapy services.
(5) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.
(6) "Equivalent course of study" means a master's or doctoral degree from a nationally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by, the coursework in each of the basic core areas listed in [Section 2 of] 201 KAR 32:020, Section 2(2).
(7) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.
(8) "Provider" means an organization approved by the Kentucky Board of Licensure for Marriage and Family Therapists for providing continuing education programs.
(9) "Raw data" means audio tapes, direct observations, interactive videos, oral or written reports, [or] video tapes, or other electronic media.
(10) "Relevant" means having content applicable to the practice of marriage and family therapy as determined by the board.
(11) "Successful completion" means that the licensee has satisfactorily met the specific requirements of the program and the licensee has earned the continuing education hours.
(12) "Two (2) years experience in the practice of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

EILEEN D. DURBIN, Chairperson
APPROVED BY AGENCY: August 21, 2003
FILED WITH LRC: August 27, 2003 at 4 p.m.
CONTACT PERSON: Nancy L. Black, Executive Director, State Board of Licensure of Marriage and Family Therapists, PO Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3296, fax (502) 564-4818.

STATE BOARD OF LICENSURE OF MARRIAGE AND FAMILY THERAPISTS
(As Amended at ARRS, December 10, 2003)

201 KAR 32:025. Marriage and family therapist associate.
marriage and family therapist associate permit. This admin-
istrative regulation establishes the requirements for marriage and
family therapist associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1) A person desiring to be a marriage and
family therapist associate shall apply for and submit to the board
an "Application for License as a Marriage and Family Therapist
Marriage and Family Therapist Associate" with a fee of fifty (50)
dollars for the first year. The initial application shall include a copy
of a supervisory contract with the designated supervisor for ap-
proval by the board. [No marriage and family therapist associate
shall begin-practice without a contract which includes a supervisor
approved by the board. A marriage and family therapist associate
shall cease-practice of marriage and family therapy immediately
upon termination of the supervisory contract.]
(2) An annual renewal fee of twenty-five (25) dollars for each
subsequent year shall be submitted to the board. Contract renewal
and extension shall be granted in accordance with Section 4 of this
administrative regulation.

Section 2. Supervisory Contract. (1) Prior to beginning a
course of supervision for the purpose of meeting licensure re-
quirements, a marriage and family therapist associate shall con-
tract with an approved supervisor in writing.
(2) The approved supervisor shall enter into a "Plan of Super-
vision for Clinical Marriage and Family Therapy Experience" with a
person who meets the criteria for becoming a marriage and family
therapist associate.
(3) The approved supervisor shall be responsible for the mar-
riage and family therapist associate’s development and the welfare
of the clients served by the marriage and family therapist associat-
e.
(4) If a new supervisory contract is entered into with a different
supervisor, approval shall be obtained from the board.

Section 3. Contract Information [Terms]. The supervisory
contract between the marriage and family therapist associate and
the approved supervisor shall contain the following information
[terms]:
(1) The name of the marriage and family therapist associate;
(2) The name and license number of the approved supervisor
of record;
(3) The name and license number of other approved supervi-
sors;
(4) The agency, institution, or organization where the experi-
ence will be received;
(5) A detailed description of the nature of the practice including
the type of:
(a) Clients to be seen;
(b) Therapies and treatment modalities which shall be used
including the prospective length of treatment; and
(c) Problems or conditions which shall be treated;
(6) The nature, duration, and frequency of the supervision,
including the:
(a) Number of hours of supervision per week;
(b) Amount of group and individual supervision; and
(c) Methodology for transmission of case information;
(7) The conditions or procedures for termination of the supervi-
sion; and
(8) A statement that:
(a) The approved supervisor of record understands that he
shall be held accountable to the board for the care given to the
marriage and family therapist associate’s clients; and
(b) The approved supervisor of record and other supervisors
meet the criteria established in existing administrative regulations
[regulation].

Section 4. Contract Renewal and Extension. (1) Upon approval
of the board, a supervisory contract shall be issued for a term of
three (3) years.
(2) At the conclusion of the original three (3) year term, the
marriage and family therapist associate may request that a supervi-
sory contract be renewed for a period of one (1) year.

(3) If a marriage and family therapist associate is unable to
complete the requirements of the contract and wishes to retain his
permit, he shall request a one (1) year extension.
(4) There shall not be a limit on the number of extensions that
may be granted a marriage and family therapist associate.

Section 5. Clinical Supervision. (1) Clinical supervision shall:
(a) Be equally distributed throughout the qualifying period;
(b) Be clearly distinguishable from psychotherapy, didactic
enrichment or training activities; [and]
(c) Focus on raw data from the supervisee’s current clinical
work made available to the supervisor; and
(d) Be direct, face-to-face contact between the supervisor and
supervisee.
(2) The supervision process shall focus on:
(a) Accurate diagnosis of client problems leading to proficiency
in applying professionally recognized nomenclature and developing
a plan for treatment as set forth in the Diagnostic and Statistical
Manual of Mental Disorders;
(b) Development of treatment skills appropriate to the thera-
peutic process;
(c) Development of sensitivity to context and issues relating
specifically to the family or individual being counseled;
(d) Acknowledgment of an awareness of the use of the profes-
sional self of the therapist in the process of therapy;
(e) Increased theoretical and applied knowledge for the ther-
apist;
(f) Acquisition of a greater depth of knowledge and range of
techniques in the provision of marriage and family therapy; and
(g) Awareness of ethical issues in practice, in order to safe-
guard and enhance the quality of care available to marriage and
family therapy clients.
(3) Examples of clinical supervision may include:
(a) Supervision-beside a one (1) way mirror;
(b) Video either in individual or group supervision; and
(c) Therapy and supervision involving supervisors and supervi-
ssee(s);
(4) Oral and written reports shall not constitute more than fifty
(50) percent of raw data used for direct, face-to-face clinical super-
vision.
(5) [56] Clinical supervision via Interactive video shall not ex-
ceed fifty (50) hours raw data used for direct, face-to-face.
(Any alternative format of direct, face-to-face clinical super-
vision shall not be practiced in the session.
(6) Groups of up to six (6) persons, behind a one (1) way mir-
or, may receive credit for group supervision if an approved super-
visor is present and students are actively participating in the ses-
sion. Up to two (2) students seeing a client on the other side of the
one (1) way mirror may concurrently receive client contact and
individual supervision hours if the approved supervisor is actively
supervising the session.
(7) In a therapy session involving a supervisor and supervisee:
(a) [An approved supervisor and not more than two (2) super-
visors.] The role of the approved supervisor as a supervisor or
cotherapist shall be clearly defined prior to beginning a therapy
session
(b) The supervisees may receive credit for client contact hours
and supervision hours.
(8) An individual supervisee may present a videotape in group
supervision with an approved supervisor. The individual supervisee
may receive group supervision hours if not more than [that] five (5)
additional students are present. The additional students may also
receive group supervision credit if they are actively involved in the
process.

Section 6. Incorporation by Reference. (1) The following mate-
rial is incorporated by reference:
(a) "Application for License as a Marriage and Family Ther-
apist or Marriage and Family Therapist Associate", (6/17/99 Edition)
[Board of Marriage and Family Therapists]; and
(b) "Plan of Supervision for Clinical Marriage & Family Therapy
Experience", (6/17/99 Edition) [Board of Marriage and Family
Therapists].
(2) This material may be inspected, copied, or obtained, sub-
VOLUME 30, NUMBER 7 – JANUARY 1, 2004

ject to applicable copyright law, at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EILEEN D. DURBIN, Chairperson
APPROVED BY AGENCY: August 21, 2003
FILED WITH LGOC: August 27, 2003 at 4 p.m.
CONTACT PERSON: Nancy L. Black, Executive Director, State Board of Licensure of Marriage and Family Therapists, PO Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3295, fax (502) 564-4818.

STATE BOARD OF LICENSURE OF MARRIAGE AND FAMILY THERAPISTS
(As Amended at ARRS, December 10, 2003)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 335.340(7)
STATUTORY AUTHORITY: KRS 335.320(9), 335.340(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) [(4)(b)] authorizes the board to promulgate an administrative regulation requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their license. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the one (1) year licensure period for renewal.
(2) All hours shall be in or related to the field of marriage and family therapy.
(3) Three (3) hours of the fifteen (15) hours required by subsection (1) of this section shall be accrued in the fields of professional ethics.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the mandatory license shall be directly related to the professional growth and development of marriage and family therapy practitioners. They may be earned by completing any of the following educational activities:
(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:
(a) Programs provided by the American Association for Marriage And Family Therapy (AAMFT) and its state affiliates;
(b) Academic courses as defined in 201 KAR 32:010 [set forth in Section 4 of this administrative regulation];
(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.
(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and therefore subsequently approved by the board:
(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;
(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;
(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication.
More than one (1) publication shall not be counted during each renewal period; and
(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to two (2) continuing education hours out of the fifteen (15) required if the board believes the related areas may serve to enhance the licensee's ability to practice.

Section 3. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, stating the:
(a) Type of learning activity;
(b) Subject matter;
(c) Names and qualifications of the instructors; and
(d) Number of continuing education hours offered.
(2) A continuing education activity shall be qualified for preapproval [approval] if the board determines the activity being presented:
(a) Is an organized program of learning;
(b) Pertains to subject matters which integral to the practice of marriage and family therapy;
(c) Contributes to the professional competency of the licensee; and
(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 4. Responsibilities and Reporting Requirements of Licensees. A licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding a license shall:
(1) Select approved activities by which to earn continuing education hours;
(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 3 [4] of this administrative regulation;
(3) Maintain records of continuing education hours. Each licensee shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each licensure renewal period, up to fifteen (15) percent of all licensees 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. Verification of continuing education hours shall not otherwise be reported to the board;
(4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and
(5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license.

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 [2] of this administrative regulation into the immediately following licensure renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision [decisions]. The request shall be in writing.
and shall be received by the board within thirty (30) days after the date of the board’s decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician.

(3) A waiver [Waiver] of the minimum continuing education requirements or an extension [extension] of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

EILEEN D. DURBIN, Chairperson
APPROVED BY AGENCY: August 21, 2003
FILED WITH LRC: August 27, 2003 at 4 p.m.
CONTACT PERSON: Nancy L. Black, Executive Director,
State Board of Licensure of Marriage and Family Therapists, PO Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3296, fax (502) 564-4816.

TOURISM DEVELOPMENT CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, December 10, 2003)


RELATES TO: KRS 235.040, 235.220
STATUTORY AUTHORITY: KRS 235.220(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 235.220 authorizes the department to establish an annual registration fee for a manufacturer [manufacturer] or dealer of motorboats in the state of Kentucky. This administrative regulation establishes the annual registration fee for boat manufacturers and dealers and establishes the requirements for registering as a boat manufacturer and boat dealer.

Section 1. Definitions. (1) "Boat dealer" means a person who is in the business of selling motorboats in Kentucky, other than a personal boat.

(2) "Boat manufacturer" means a person who is in the business of manufacturing boats in Kentucky.

(3) "Dealer or manufacturer certificate" means the certificate issued to a boat manufacturer or boat dealer that bears an identification number assigned by the department signing registration as a boat manufacturer or a boat dealer.

(4) "Plate" means a moveable identification tag bearing a number assigned by the department signing registration as a boat manufacture or a boat dealer.

Section 2. Application. (1) A person [Persons] shall apply annually for a boat manufacturer's or boat dealer's registration on an application provided by the department or via the department's Internet site.

(2) A new application for annual registration shall be submitted each year to the department. Boat manufacturer and dealer certificates and plates shall expire April 30 of each year.

(3) Information to be provided on the application shall include:
(a) Name, address and contact information;
(b) Address of business;
(c) Number of boats manufactured or sold in the year prior to application;
(d) Type of vessel manufactured or sold; and
(e) Copy of the Sales and Use Tax Permit issued by the Revenue Cabinet. If an applicant is using the Internet to process his or her application, he shall inser the six (6) digit account number issued by the Revenue Cabinet on the Sales and Use Tax Permit.

(4) A manufacturer [Manufacturers] shall include on an application for annual registration the assigned U.S. Coast Guard assigned manufacturers identification number.

(5) An applicant [Applicants] shall include a $100 ($160) annual registration fee with his or her application.

(6) The registration provisions of this section shall not apply to licensed out-of-state manufacturers and dealers who are attending boat shows and other temporary exhibitions in Kentucky, provided their home state grants [grant] Kentucky manufacturers and dealers similar reciprocal privileges.

Section 3. Certification and Plate. (1) Boat manufacturers and dealers shall place in a conspicuous location at his or her place of business, the certificate issued by the department.

(2) The plate shall be kept aboard a boat and readily available for inspection by a law enforcement officer. The boat shall also abide by the registration requirements of KRS 235.220.

Section 4. Revocation of Certificate and Registration. A boat dealer or manufacturer shall forfeit his or her registration certificate and plate if he or she has:
(1) Been convicted of a violation of KRS Chapter 235;
(2) Falsified his or her application for certification as a boat manufacturer or dealer, or
(3) Misused his or her boat dealer or manufacturer certification and plate.


(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.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
APPROVED BY AGENCY: September 15, 2003
FILED WITH LRC: September 15, 2003 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, December 10, 2003)

804 KAR 4:030. Transport permit, nonresident licensee.

RELATES TO: KRS 243.030(20), 243.200
STATUTORY AUTHORITY: KRS 241.080(1), 243.030(20)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.200 establishes [established] the requirements for qualification as a transporter of distilled spirits and wine. The primary authorization of KRS 243.200 this statute extends only to those referred to as "common carriers". Pursuant to KRS 241.080(1) and 243.030(20), this administrative regulation extends the same transportation privilege to nonresident distillers, vintners, or wholesalers to transport their products purchased in Kentucky to their place of business outside of Kentucky, and to nonresident distillers, vintners or rectifiers to deliver to licensed wholesalers in Kentucky. This administrative regulation is primarily for what would be considered as "company owned trucks" as distinguished from a common carrier. The fee for the transport permit, nonresident [herein] licensee appears in KRS 243.030(20).

Section 1. (1) Pursuant to KRS 243.030(20) the Administrator of the Distilled Spirits Unit of the Department of Alcoholic Beverage Control is hereby empowered and authorized to issue a transport permit, which shall be designated "nonresident licensee's permit" to any nonresident distiller, vintner, or wholesaler who is authorized by the state of his residence and also by the federal government to
receive and transport distilled spirits and wine.

(2) A no waiting period shall be required, unless in the discretion of the administrator the [such] waiting period is deemed necessary for the purpose of investigating the applicant.

(3) Application for a nonresident licensee's permit shall be made in writing, under oath, on a form furnished by the Department of Alcoholic Beverage Control that is incorporated by reference [and shall set forth in detail such information as the administrator may, after approval by the board, require].

(4) The application shall be accompanied by:

(a) A photostatic copy [copies] of the applicant's Interstate Commerce Commission Authority (ICC) permit [state and federal permits].

(b) A statement that the applicant, if granted a permit, will allow any authorized field representative of the Department of Alcoholic Beverage Control to stop and examine the cargo of any truck or vehicle in which distilled spirits or wine are being transported within the boundaries of the Commonwealth of Kentucky.

(c) [A statement specifying the routes over which the applicant expects to haul]

(d) A corporate surety bond in the amount of $2,500, the [and in such form as the Alcoholic Beverage Control Board may prescribe, such bond to be forfeited to the Commonwealth of Kentucky if [in the event] the permittee violates any of the provisions of this administrative regulation.

Section 2. (1) The following shall be [are] required of the nonresident licensees after the license has been issued:

(a) The name of the nonresident company, the special nonresident licensee's permit number, and the state and federal permit numbers shall [must] be painted on both sides of the vehicle in uniform letters of contrasting color at least three [two and one-half (2 1/2)] inches high, for those vehicles added or altered in the ordinary course of business after the effective date of this administrative regulation.

(b) The driver of the vehicle shall have a photostatic copy of the nonresident licensee's permit from the Kentucky Department of Alcoholic Beverage Control in the vehicle.

(c) All persons holding a Kentucky nonresident licensees' permit shall be [are] required to file reports [Revenue Form 503T] with the [Department of] Revenue Cabinet on or before the 15th of each month, covering the preceding month's transactions. [It is necessary that Only one (1) report may Revenue Form 503T] be submitted to cover each unit shipment of alcoholic beverages transported into and from the State of Kentucky. Each Revenue Cabinet report shall [Form Revenue 503T] must show the state license number, the name and address of consignor and consignee, shipping date, delivery date, number of cases according to size contained in each shipment, and shall [must] be signed by an official of the company handling the shipment.

(2) The nonresident licensee's permit shall authorize the holder [thereof] to transport for himself only, distilled spirits and wine from the licensed premises of a Kentucky manufacturer, distiller, vintner or rectifier to his licensed premises only, and beverages on which the Kentucky tax has been paid may be transported from the licensed premises of a nonresident distiller, vintner or rectifier to wholesalers licensees within the Commonwealth of Kentucky, if he transports the [provided that he so transport such] alcoholic beverages in a truck or other vehicle owned and operated by a nonresident licensee [himself], which shall have affixed to its side a sign in uniform letters of at least three [two and one-half (2 1/2)] inches high containing the name of the [his] company, and the [his] state and federal permit numbers, for the vehicles added or altered in the ordinary course of business after the effective date of this administrative regulation.

(3) It is further provided that the permit may be revoked or suspended for any cause which the Alcoholic Beverage Control Board may in its sound discretion deem sufficient. Proceedings relative to revocation or suspension shall be the same as those provided for licensees under the alcoholic beverage law, pursuant to KRS Chapter 13B.

Section 3. Incorporation by Reference. (1) "Transport permit, nonresident licensee - Schedule T" (10/11/2002) is incor-

porated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Ky

VOLUME 30, NUMBER 7 – JANUARY 1, 2004

(706) 488-331

Section 1. Definitions. (1) "CMS" means the Centers for Medicare and Medicaid Services.

(2) "Deficiency" means a failure to meet either a state licensure requirement or a federal requirement for participation in the Medicare or Medicaid Program.

(3) "Enforcement action" means a remedy applied to effect prompt compliance by a provider with program requirements.

(4) "IDR" means informal dispute resolution.

(5) "IDR coordinator" means a CMS-certified surveyor employed by the Office of Inspector General, Division of Long-term Care, designated by the Director of the Division of Long-term Care to serve as the IDR coordinator.

(6) "Immediate jeopardy" is defined in 42 C.F.R. 488.301.

(7) "Inspector general" means the inspector general or his designee.

(8) "Plan of correction" means a description of actions by a provider to correct a deficiency.

(9) [9] "Provider" means a "long-term care facility" as defined in KRS 216.510.

(10) [9] "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) [9] "Statement of deficiencies" means the written notification to the provider describing how the provider fails to meet regulatory requirements.

(12) [14] "Substandard quality of care" is defined in 42 C.F.R. 488.301.

Section 2. Request for Informal Dispute Resolution. (1) A provider shall have one (1) opportunity to informally dispute a cited deficiency or scope and severity assessment that constitutes substandard 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.
2. A cited deficiency with a scope and severity assessment that constitutes 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 extension 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 request 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 coordinator at the Office of Inspector General, Division of Long-Term Care, CHR Building, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621.

(7) A request for IDR shall not delay an enforcement action.

Section 3. Review Process. (1) The IDR coordinator shall receive and review each request for an IDR, and:

(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 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 [determination] 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 coordinator 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; and
      2. Seek answers to questions relating to the disputed deficiency; and
   (c) Make a recommendation to the inspector general [determination] 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;
   (b) 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
   (c) A person currently engaged in the provision of long-term care services who has no affiliation with the provider disputing a deficiency.

   (b) The members of the panel shall review documentation submitted by the provider prior to the panel review meeting.

   (c) Unless the provider requests and the IDR coordinator agrees to an expanded time period, the panel review meeting shall not exceed one (1) hour. The decision to expand the time period for the IDR shall be based on the number and complexity of the deficiencies to be disputed.

   (d) The provider may present additional oral information relating to the disputed deficiency;

   (e) A member of the survey team responsible for citing the disputed 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) A person presenting information to the panel or answering questions of the panel may refer to relevant reference materials.

(h) The provider may present an oral summary of its response to a disputed deficiency;

(i) [6] After the panel review meeting has concluded, the panel shall review all of the information presented relating to the disputed deficiency;

(j) [6] The voting members of the panel shall make a recommendation 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.

(5) 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 severity assessment;
   (d) Modify the cited deficiency by changing the tag number; or
   (e) Delete the cited deficiency.

(6) A determination and the reasons supporting the 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.

(7) If the Inspector General makes a determination that is different from the recommendation of the IDR coordinator or the IDR panel:

(a) The notification required by subsection (6) of this section shall also include the specific reasons for the difference; and

(b) The provider shall be given an opportunity for an in-person meeting with the Inspector General to present documentation originally submitted to the IDR Coordinator or the IDR panel and seek a reconsideration of the determination. The meeting shall be conducted to allow sufficient time to ensure that a reconsidered determination can be mailed to the provider within thirty-five (35) working days of the receipt of the request for IDR.

(8) [6] If a cited deficiency was modified as a result of the informal 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
modification 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.
(b) [69] [73] If[a cited deficiency was deleted 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 deletion;
(b) A new statement of deficiencies absent the deleted deficiency. 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
MARICIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 10, 2003
FILED WITH LRC: October 14, 2003 at noon
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Medicaid Services for Mental Health and Mental Retardation
(As Amended at ARRS, December 10, 2003)

907 KAR 1:145. Supports for community living services for an individual [individuals] with mental retardation or a developmental disability [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 194.030(2) [194A.030(2)], 194A.030(3) [194A.030(3)], 194A.050(1), 205.520(3), 205.0317 [194.060, EO 96-862]
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, 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 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 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 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 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) "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 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, an SCL recipient's legal representative, support coordinator, or others designated 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 319.050.
(16) "Qualified medical retardation professional" or "QMMP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and meets [meet] 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(2) of this administrative regulation.
(18) "SCL recipient" means an individual who meets the criteria established in Section 2(1) of this administrative regulation.
(19) "Speech therapist" means an individual who is licensed in accordance with KRS 334A.033.
(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 1:005;
(e) Submit an application packet to DMHMR 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/ID Service Providers Form, MAP-4102;
3. The level of care determination;
4. The results of a physical examination that was conducted within the last twelve (12) months [at least 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 QMMP and be less than one (1) year old;
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6. The results of 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 MAF-24 documenting an individual's status change; and
(f) Receipt of 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 1:605;
(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 MAF-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.
   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 (90) consecutive days without adequate 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;
      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;
            5. Submittal of a DMR-01 to DHMR at least twenty (20) days prior to the effective date of the intended action; and
            6. 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) Voluntary 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 service provider and to 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 1:673, 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 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.

(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 to the SCL recipient:
   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 administrative regulation for determining the eligibility of an individual for admission to services; and
(d) Document any denial for a service and 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 operations 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 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.

(5) 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;
3. The SCL recipient or legal representative shall be notified if 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 send and receive unopened mail;
4. The right to retain and use personal possessions including clothing and grooming articles;
5. The right to private, accessible use of the telephone;
6. 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 (28 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:
1. A covered service is provided;
2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);
(b) All [for 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:
1. The department;
2. DHR or its designee;
3. The Commonwealth of Kentucky, Cabinet for Health Services, Office of Inspector General or its designees;
4. The United States General Accounting Office or its designees;
5. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designees;
6. The Commonwealth of Kentucky, Office of the Attorney General or its designees;
7. The Commonwealth of Kentucky, Cabinet for Families and Children or its designees; or
8. The Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from local, state, and federal agencies.

(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 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;
(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 educational plan (IEP) or individual family
service plan (IFSP), if applicable;
14. The SCL recipient's social history updated at least annually;
15. The results of 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;
(a) 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;
(b) Have the safety from loss, destruction or theft by an unau-
thorized person ensured by the provider; and
(i) Be available to the SCL recipient or legal guardian accord-
ing 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
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;
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) Not employ or place an individual with a prior conviction of
an offense delineated in KRS 17.165(1) through (3) or prior felony
conviction; and
(g) Evaluate the performance of each employee upon comple-
tion of the agency's designated probationary period and at a mini-
um 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 services field; and
2. Has a minimum of one (1) year of administrative responsi-
bility in an organization which served individuals with mental retard-
ation 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 re-
sponsibility in an organization which served individuals with mental
retardation or developmental disabilities;
2. Is a QMP; and
3. May serve as executive director if the requirements estab-
lished in paragraph (a) of this subsection of this administrative
regulation are met; []
(c) Have adequate direct-contact staff who:
1. Is eighteen (18) years or older; and
2. Has a high school diploma or GED; or
3. Is at least twenty-one (21) years old; and
4. Is able to adequately communicate with recipients and
staff [has-effective communication skills]; and
(d) Has adequate supervisory staff who:
1. Is eighteen (18) years or older; and
b. Has a high school diploma or GED; or
2a. Is at least twenty-one (21) years old; 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 recipi-
ent; []
(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 500.060 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 allow-
ance of the Food and Nutrition Board of the National Research
Council 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 medic-
ation; 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 medi-
cation and ensure that the medication shall:
1a. Be kept in a locked container;
2a. If controlled substance, be kept under double lock;
3a. Be carried in a proper container labeled with medication and
dosage and accompany and be administered to an SCL recipi-
ent at a program site other than his or her residence if necessary; and
4a. 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 guide-
lines 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 docu-
mented 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 trainee verifying completion;
(d) Ensure that each employee completes [complete] Phase I
training, consistent with a DMHMR 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;
(a) Ensure that each employee completes [completed] Phase II
training, consistent with a DMHMR 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;
  4. A speech therapist providing speech therapy; and
(g) Ensure that an individual volunteer performing direct care
staff or a supervisory function receives (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. 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 concern-
ing 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 behavioral 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; and
  8. Be limited to ten (10) hours for an initial functional assess-
ment 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; and
  3. Provided to enable the SCL recipient to:
    a. Participate in a community project as a volunteer in a typical
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 didactic;
  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) Progress, regression, and maintenance toward outcome
identifies in the ISP; and
    (v) The signature, date of signature and title of the individual
preparing the summary staff note; and
  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 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; and  
   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; and  
   (iv) Progress, regression and maintenance toward outcomes identified in the ISP; and  
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;  
(f) A prevocational service which shall be:  
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; and  
   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  
6. Limited to forty (40) hours per week alone or in combination with community habilitation;  
(g) Psychological services which shall:  
1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;  
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; and  
   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; and  
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;  
   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;
   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, regressions, 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 service which shall be:
    1. [a.] Provided only to an SCL recipient unable to administer self-care;
    2. [b.] Provided in a variety of settings;
    3. [c.] Provided on a short-term basis due to absence or need for respite of an individual providing care to an SCL recipient; and
    4. [d.] Provided only an SCL recipient who resides in a family care home, adult foster care home, or his or her family's home;
   5. [e.] Limited to 1440 hours per calendar year; and
   6. [f.] Documented by a detailed staff note which shall include:
    a. [ii] The date of the service;
    b. [iii] The beginning and ending time; and
    c. [iii] The signature, date of signature, and title of the individual providing the service;
   (i) 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 programs (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. Exclusion 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 and be sent to DMHR 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;
    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. Exclusion of the provision of a direct service to an SCL recipient; and
    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; and
    18. 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; 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; and
  4. Unavailable under a program funded by either the Rehabili-
     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 em-
     ployment 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; and
     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 out-
             comes 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 Men-
     tal 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 pro-
     rvider 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 its designee, within ten (10) calendar days of discovery,
        and shall include a complete written report of the incident inves-
        tigation 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. DMHMR immediately upon discovery, if involving suspected
        abuse, neglect, or exploitation in accordance with KRS Chapter
        205; and
     d. The assistant director of the Division of Mental Retardation,
        DMHMR, or its 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 inci-
        dent occurs after 5 p.m. EST on a weekday, or occurs on a week-
end 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 physici-
an or a QMRP indicating medical necessity.
(4) DMHMR or its designees shall validate the MAP-620 appli-
cation 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 indi-
nual 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 substanti-
     ated 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;
     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;
  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 deter-
     mined 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 are 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 an
     other 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; or
  4. The individual is less than twenty-one (21) years of age;
  (8) 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 an-
other.
(11) 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
(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;
(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 notification 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 coordinator.
(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 1:560.
(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.
(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 3. Provider Participation. (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 1:022;
(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; 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 comparable services as provided for in 42 U.S.C. 1396n(3).
(5) The SCL services 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 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...
VOLUME 30, NUMBER 7 – JANUARY 1, 2004

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 supports 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) A written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and 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 data on the SCL waiting list and the continued desire to pursue placement in the SCL Program. The request for data shall be received by the department within thirty (30) days from the date of the letter, excluding holidays and weekends.
   (e) 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.
      (1) The criteria for removal from the waiting list shall be:
         (A) A documented transfer to or from another program funded by the department.
         (B) Referral to an alternative living arrangement, e.g., a program funded by the department.
         (C) A change in the individual's condition that no longer requires the services of the SCL program.
         (D) The individual's condition no longer meets the criteria for SCL program eligibility.
   (f) 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. Personal emergency response systems.
      2. Room and board shall be excluded from coverage.
      3. Special education and 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; and
   (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 ICF-MR services for persons with mental retardation or developmental disabilities.

Section 7. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with Title 907 KAR 1:563.
   (2) A decision to terminate an individual or to reallocate placement subject to appeal shall not be final until an order is issued in accordance with Title 907 KAR 1:563.

   (2) The material [it] 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 16, 2007
FILED WITH LRC: July 22, 2003 at 1 p.m.
CONTACT PERSON: Jil 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.
BOARD OF LICENSURE FOR OCCUPATIONAL THERAPY  
(Amended After Comments)


RELATES TO: KRS 319A.010(8), 319A.070(4), 319A.170(1)(c)  
STATUTORY AUTHORITY: KRS 319A.070(1), 319A.080(4)(a)-(d)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.170 states that the board shall issue a certification to a person who qualifies under this administrative regulation. This administrative regulation sets forth the requirements for obtaining certification in deep physical agent modalities.

Section 1. Definition. "DPAM Specialty Certification" means the certification issued to a Kentucky-licensed occupational therapist or licensed occupational therapist assistant who meets the standards set forth in KRS 319A.180 and this administrative regulation and who has been certified by the board.

Section 2. Application. A licensee, before utilizing deep physical agent modalities, shall submit an application to the board for a DPAM Specialty Certification.

1. The application shall be accompanied by:
   (a) Payment of the fee required by KRS 319A.170(1)(c).
   (b) Proper documentation that the applicant has met all educational and clinical requirements for certification which include:
      1. Successful completion of the requisite hours of training and instruction required by KRS 319A.080(4) for the level of licensure held by the applicant; and
      2. Successful completion of the five (5) treatment sessions that meet the requirements specified in Section 4 of this administrative regulation.

   2. The documentation shall include:
      (a) The names and addresses of the person or organization presenting the courses or training attended by the applicant;
      (b) A copy of the course syllabus or a description of the workshop or seminar which includes a summary of the learning objectives and teaching methods employed in the workshop or seminar and the qualifications of the instructors;
      (c) The name and address of the person who supervised the treatment sessions;
      (d) A statement signed by the supervisor confirming that the applicant has completed five (5) supervised treatment sessions and that the criteria set forth in Section 4 of this administrative regulation have been met; and
      (e) A statement signed by the designated program official confirming successful completion of the training or course of instruction.

3. A DPAM Specialty Certification shall be issued by the board before the individual can begin using deep physical agent modalities except when a qualified licensee is performing those modalities as part of a supervised program to complete the supervised treatment sessions required for a DPAM Specialty Certification under this administrative regulation.

4. The board shall maintain a roster of persons who have been issued DPAM Specialty Certification for the use of deep physical agent modalities.

5. An OT/L or OTA/L who is also licensed by the Kentucky Board of Physical Therapy as a physical therapist or physical therapist assistant and who seeks a DPAM certification shall be certified by the board upon application.

Section 3. Training and Instruction. (1) The training and instruction shall be earned by direct personal participation in courses, workshops, or seminars.

2. The content of the courses, workshops, or seminars shall include training and instruction in the following subject areas:
   (a) Principles of physics related to specific properties of light, water, temperature, sound, and electricity;
   (b) Physiological, neurophysiological, and electrophysiological changes which occur as a result of the application of each of the agents identified in KRS 319A.010(8);
   (c) Theory and principles of the utilization of deep physical agents which includes guidelines for treatment or administration of agents within the philosophical framework of occupational therapy;
   (d) The rational and application of the use of deep physical agents;
   (e) The physical concepts of ion movement;
   (f) Critical thinking and decision making regarding the indications and contraindications in the use of deep physical agents;
   (g) Types selection and placement of various agents utilized;
   (h) Methods of documenting the effectiveness of immediate and long-term effects of interventions;
   (i) Characteristics of equipment including safe operation, adjustment, and care of the equipment; and
   (j) Application and storage of specific pharmacological agents.

3. The programs shall be approved or recognized either by the American Occupational Therapy Association or the American Society of Hand Therapists or be approved by the board.

4. A person who is seeking board approval for training and instruction courses, workshops, or seminars which are intended to meet the requirements of KRS 319A.080(4) shall submit a "DPAM Course, Workshop or Seminar Provider Approval Application Form" to the board.

Section 4. Supervised Treatment Sessions. (1) The supervised treatment sessions required for certification shall be [conducted on a client and shall be] sufficiently detailed to allow the DPAM Specialty Certification supervisor to determine that the supervisee has demonstrated the following skills:

(a) The ability to evaluate or contribute to the evaluation of the client, depending upon the applicant's licensure status as an OT/L or an OTA/L and make an appropriate selection of the deep physical agent to be utilized;

(b) A thorough knowledge of the effects of the deep physical agent which is to be utilized;

(c) The ability to explain the precaution, contraindication, and rationale of the specific deep physical agent utilized;

(d) The ability to formulate and justify the occupational therapy intervention plan specifically delineating the adjunctive strategy associated with the use of each deep physical agent;

(e) The capability to safely and appropriately administer the deep physical agent; and

(f) The ability to properly document the parameters of intervention which include the client's response to treatment and the recommendations for the progression of the intervention process; and

(g) The skills identified in paragraphs (d) and (f) of this subsection are not applicable to an OTA/L's practice and an OT/L is not required to demonstrate the skill in a supervised treatment session.

2. The supervised treatment sessions shall include one (1) session for each of the following areas:
   (a) Iontophoresis;
   (b) Ultrasound; and
   (c) Electrical stimulation.

3. The remaining two (2) sessions may cover any deep physical agent identified in KRS 319A.010(8).

4. Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM Specialty certification supervisor and that all of the requirements of this administrative regulation have been met.

§ 201 KAR 28:170 [Supervised treatment sessions may be completed in a laboratory portion of an instructional course, provided that the instructor meets the board's requirements for a DPAM Specialty certification supervisor and that all of the requirements of this administrative regulation have been met.]

- 1780 -
Certification supervisor and that all of the requirements of this administrative regulation have been met.

5) Treatment sessions shall be completed under the direct supervision of a person who meets the requirements of subsection (5) of this section and is approved by the board.

6, (6)(a) Before an individual may be a supervisor for the treatment sessions specified in this administrative regulation, he or she shall:
(a) Be licensed or certified by a state agency that has the authority to permit the use of deep physical agent modalities;
(b) Be licensed at a level which permits the individual to fully and independently evaluate the client;
(c) Be in good standing with that agency; and
(d) (e) Have one (1) year of clinical experience in the use of deep physical agent modalities.

7) The issuance of the DPAM specialty certification by the board only shows that the applicant has met the minimum requirements of KRS 319A.080(4)(a). It is the duty of the individual licensee to determine their competency to provide a specific DPAM for a client.

Section 5. An OTAIL certified to use DPAMs under this administrative regulation may only use DPAMs when supervised by an OTAIL certified to use DPAMs under this administrative regulation.

Section 6. Incorporation by Reference. (1) "DPAM Course, Workshop or Seminar Provider Approval Application Form" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JULIA WESTFALL, Chair
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 15, 2003 at 10 a.m.

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 establishes the requirements for a specialty certification in deep physical agent modalities.
(b) The necessity of this administrative regulation: KRS 319A.080(4) allows the board to set forth guidelines for the training and instruction necessary for the use of deep physical agent modalities. KRS 319A.170 states that the board issues a certification to a person who qualifies under this regulation. This regulation sets forth those requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.070 and 319A.080(4) authorizes the board to set the requirements for the certification of licensees in the area of deep physical agent modalities.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation informs applicants of the requirements for certification.
(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 who may seek to qualify for the certification.
(f) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The regulation specifies the requirements for certification in deep physical agent modalities, thus ensuring that the licensees know what is expected by the board to obtain certification.
(g) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Costs associated with the initial implementation of this regulation will involve the review of the applications for certification. The cost of reviewing the applications will be absorbed into the presently existing expenses by the board.
(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.
(h) 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.
(i) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The fee for the certification was specifically set by the General Assembly in KRS 319A.170.
(j) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(k) TIERING: Is tiering applied? The regulation follows the differing requirements for training and instruction instituted by KRS 319A.170 for occupational therapists and occupational therapy assistants.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:005. Permits to construct, modify, or operate a facility.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.16-100, 224.70-100, 224.70-110
STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.16-050, 224.16-060, 224.16-100, 224.70-100, 224.70-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation establishes (provides) administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224 and establishes conditions for construction of facilities under this chapter. The administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits. There is no federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no discharge operations, therefore this administrative regulation is not more stringent than the federal requirements. The operational permit requirements are contained in the KPDES administrative regulations in 401 KAR 5:050 through 5:080 which are the same as the federal requirements.

Section 1. Applicability. (1) This administrative regulation shall apply to owners and operators of facilities subject to the administrative regulations of this chapter.
(2) A [Ne] person shall not construct, modify, or operate a facility without having received a permit from the cabinet. A con-
struction or modification permit shall not be [is] not required for maintenance replacement for components of an existing facility or for changes which do not affect the treatment processes of the facility, but shall be [is] required for replacement of an entire wastewater treatment plant (WWTP). The operational permit provisions of Sections 2, 24, 25, 27, and 29(2)(h) and (i) of this administrative regulation; and

(3)(a) The following requirements shall apply to agricultural wastes handling systems, as defined by 401 KAR 5:002 [5:004]:

1. Agricultural wastes handling systems which convey, store, or treat manure from concentrated animal feeding operations as defined by 401 KAR 5:002 [5:004] shall:
   a. Obtain a permit to construct or modify the facility, complying with only Sections 2, 24, 25, and 29(2)(h) and (i) of this administrative regulation; and
   b. Obtain a KPDES permit and comply with 401 KAR 5:026 through 5:080.

2. All other agricultural wastes handling systems shall obtain permits to construct, modify, or operate the facility pursuant to this administrative regulation complying with only Sections 2, 24, 25, 27, and 29(2)(h) and (i) of this administrative regulation. A KPDES [No-KPDES] permit shall not be required for these facilities.

(b) The following shall apply to industrial wastewater treatment plants (IWWTPs) as defined by 401 KAR 5:002 [5:004]:

1. IWWTPs with closed loop systems shall obtain a KNDOP permit in accordance with Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation and any other applicable standard or requirements of 401 KAR Chapter 5. A KPDES [No-KPDES] permit shall not be required for these facilities.

2. IWWTPs with a discharge to the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility. These facilities shall, however:
   a. Comply with the "Five Mile Limit Policy" incorporated by reference in Section 29 of this administrative regulation;
   b. Obtain a KPDES permit to discharge into the waters of the Commonwealth; and
   c. Comply with all other requirements of 401 KAR Chapter 5.

3. Sewer lines which convey wastewater to IWWTPs shall not be required to obtain a construction permit.

(c) The following requirements shall apply to WWTPs which collect, convey, or treat only storm water:

1. WWTPs which collect, convey, or treat only storm water and discharge into the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility pursuant to this administrative regulation. These facilities shall, however, comply with 401 KAR 5:026 through 5:080. 401 KAR 5:060 further specifies when these facilities are required to obtain a KPDES permit.

2. WWTPs which collect, convey, or treat only storm water and do not discharge into the waters of the Commonwealth shall obtain an operational permit under this administrative regulation, complying with only Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation. A KPDES [No-KPDES] permit shall not be required for these facilities.

Section 2. Application Submittal. (1) An application to construct, modify, or operate a facility, or renew the operational permit for a facility shall be submitted on the following applicable forms, incorporated by reference in Section 29 of this administrative regulation, and shall include the applicable supporting information required by Section 3 of this administrative regulation, applicable fees required by Section 5 of this administrative regulation, and plans and specifications for the proposed construction or modification required by Section 6 of this administrative regulation.

(a) For construction of sewer line extensions, the applicant shall submit a completed Construction Permit Application for Sewer Line Extension, Form S-1, and a fee in accordance with Section 5 of this administrative regulation.

(b) For construction projects for WWTPs or IWWTPs with sewer lines with a direct discharge, the applicant shall submit or shall have submitted the completed KPDES applications required by 401 KAR 5:060 and a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1. The applicant shall also submit a construction permit fee in accordance with Section 5 of this administrative regulation and a KPDES permit fee in accordance with KRS 224.70-120.

(c) For WWTP construction projects without a discharge other than agricultural waste handling systems, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1, a completed Kentucky No Discharge Operational Permit Application, Form ND, and a construction permit fee in accordance with Section 5 of this administrative regulation.

(d) For operational permits or renewals of Kentucky No Discharge Operational Permits (KNDOPs) other than agricultural waste handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application, Form ND.

(e) For construction, renewal, modification, or operation of agricultural wastes handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B. For construction approvals, applicants shall also submit a completed Site Survey Request.

(f) For construction of minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant and a fee in accordance with Section 5 of this administrative regulation.

(g) For WWTP construction permits for a discharge for an individual residence, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, fee in accordance with Section 5 of this administrative regulation, and the completed KPDES applications required by 401 KAR 5:060.

(h) For operational permit or renewals of operational permits for publicly owned sewer systems which have at least 5,000 linear feet of sewer line and which discharge to a sewer system or a WWTP which is owned by another person, the applicant shall submit a completed Kentucky Inter-Municipal Operational Permit Application.

(2) Signatures.

(a) Applications and all reports required by the permits shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility. For a municipality, state, federal or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person.

(b) Certification. Any person signing a document under paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of imprisonment for known violations."

Section 3. Application, Supporting Information. The following items shall be submitted as a part of the application or with the application required by Section 2 of this administrative regulation:

(a) Any applicable fee required by Section 5 of this administrative regulation, and the plans and specifications for the construction project required by Section 6 of this administrative regulation:

1. The applicant shall identify who will inspect and certify that the facility under construction conforms with the plans and specifications approved by the cabinet in accordance with this administrative regulation. Facilities designed by an engineer shall be inspected and certified by an engineer.

2. The applicant shall provide an estimate for the cost of the facility.

3. The applicant shall provide a USGS 7.5 minute topographic map with the proposed project identified.

4. The applicant shall provide an estimate, and the basis for the estimate, for the average daily flow added by the proposed project.

5. Closure plan.

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the
following items:
1. How the facility will be constructed and the sewage will be diverted to the new construction without a bypass to a stream. If a bypass is unavoidable during construction, the applicant shall submit:
   a. An explanation of why construction cannot occur without the bypass;
   b. An estimate of the shortest duration for the construction to be completed;
   c. A description of all equipment, material, labor, and any other item necessary to complete the construction; and
   d. An estimate of when the necessary items for the construction will be on-site.
2. How the contents of the facility will be removed and properly disposed;
3. How the abandoned facility will be removed or filled and covered; and
4. How the abandoned sewers will be plugged and manholes filled and covered.
(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification, incorporated by reference in Section 29 of this administrative regulation, within thirty (30) days after the elimination of the discharge.
(6) Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submittal of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility. If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application. The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first. The preliminary determination may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure. The preliminary effluent limits are contingent upon the validity, accuracy, and completeness of the following information submitted by the applicant:
   (a) A reproducible copy of a USGS 7.5 minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge point identified on the map;
   (b) If a regional facility plan or water quality management plan is being or has been developed, a letter from the regional planning agency stating whether the applicant's project is compatible with the plan. The cabinet shall then make a final determination on the compatibility of the project with the plan;
   (c) For a new or an expansion of an existing regional facility pursuant to 401 KAR 5:006, a regional facility plan or water quality management plan. The planning requirements of "Recommended Standards for Underground Facilities" ("Ten States' Standards"), incorporated by reference in Section 29 of this administrative regulation, shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan; and
   (d) For WWTP projects, a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. The applicant shall demonstrate that a connection to a regional facility is not available. The applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis. The distance criteria for determining availability shall not apply to WWTPs with an average daily design capacity less than or equal to 1,000 gpd.
(7) For WWTP projects, the applicant shall submit the following design values:
   (a) Average daily flow;
   (b) Peak daily flow;
   (c) Peak hourly flow;
   (d) Influent BOD;
   (e) Influent suspended solids; and
   (f) Ammonium nitrogen (NH₃-N) of the influent.
(d) For WWTP projects, if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS 7.5 minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property which comes between the point of discharge and a blue line stream.
(9) For WWTP projects, the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 300 feet of the WWTP.
(10) For WWTP projects, the applicant shall provide a sludge management plan which includes the method of sludge processing and ultimate sludge disposal.
(11) For WWTP projects, the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit.
(12) For WWTP projects, the applicant shall submit:
   (a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;
   (b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of this administrative regulation;
   (c) The design criteria used to size the unit processes.

Section 4. Application; Preliminary Considerations. (1) A [No] permit shall not be granted to any facility which is not compatible, as determined by the cabinet, with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.
(2) A WWTP which serves an individual residence may be located within 200 feet of the dwelling that it serves. An open-top WWTP may be located within 200 feet of another dwelling which the WWTP does not serve, only if the WWTP is enclosed within a building which controls odors and dampens noise or the applicant demonstrates an equivalent method for noise and odor control will be provided.
(3) Any discharge point and direct discharges into a wellhead protection area shall comply with Water Policy Memorandum No. 84-02 (Five Mile Limit Policy), incorporated by reference in Section 29 of this administrative regulation.
(4) The initial suitability of any location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet may consider the distance to the nearest dwelling, distance to water intake used for a public water supply, downstream land use, physical characteristics and current use of the stream, physical characteristics of the proposed spray field including karst topography, need for easements, location of property boundaries, and other items consistent with this administrative regulation and KRS Chapter 224.
(5) If the discharge from the WWTP enters a sinkhole directly or enters a disappearing stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet for approval. The results of the groundwater tracer study shall be submitted to the cabinet for approval. The cabinet will review the results to determine if a discharge is approvable.
(6) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility. Permits to construct, expand, or operate a sewage system shall require connection to a regional facility when one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available.
(7) Pursuant to 401 KAR 5:300, the cabinet will coordinate issuance of a construction permit for WWTPs which require a new KPDES permit or modification to a KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 are considered in the issuance of the construction permit. The cabinet will also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP. The cabinet may condition or deny the construction permit based on these public comments.

Section 5. Fees. (1) Except as specified in KRS 224.10-100,
224.16-050, and subsection (5) of this section, the applicant shall submit a construction permit fee as provided in subsection (4) of this section with the construction permit application and any applicable KPDDES fee.

(2) If the cabinet denies a construction permit for a WWTP or sewer line, the fee for the construction permit shall be retained by the cabinet, unless the fee is for a WWTP which serves only an individual residence.

(3) The applicant shall make checks or money orders payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule, except as provided in subsection (5) of this section.

<table>
<thead>
<tr>
<th>Facility Category</th>
<th>Construction Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Facility: WWTP</td>
<td>$1,800</td>
</tr>
<tr>
<td>Intermediate Facility: WWTP</td>
<td>$900</td>
</tr>
<tr>
<td>Small Facility: WWTP</td>
<td>$450</td>
</tr>
<tr>
<td>Minor Modification to a WWTP:</td>
<td>$200</td>
</tr>
<tr>
<td>Small Facility for Nonprofit Organizations pursuant to KRS 224.16-050(5):</td>
<td>$50</td>
</tr>
<tr>
<td>Large Facility: Sewer Lines</td>
<td>$800</td>
</tr>
<tr>
<td>Intermediate Facility: Sewer Lines</td>
<td>$400</td>
</tr>
<tr>
<td>Small Facility: Sewer Lines</td>
<td>$200</td>
</tr>
</tbody>
</table>

(5) Fees in this section shall not apply to agricultural wastes handling systems or renewals of KNOP permits.

(6) The WWTP shall apply to the WWTP project and any sewers or pump stations located on the plant property. A sewer fee shall apply to all sewers, force mains, and pump stations which are bound together as one (1) set of plans. If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted.

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified under Section 501(c)(3) of the Internal Revenue Code.

Section 6. Plans and Specifications. (1) The applicant shall submit to the cabinet at least three (3) sets of detailed plans and specifications for the facility. Plans for gravity sewer lines and force mains shall include a plan view and a profile view. The submittal shall be accompanied by a completed permit application on the forms required by Section 2 of this administrative regulation and the applicable items required by this administrative regulation.

(2) The cabinet may request additional information as is necessary to evaluate the facility to ensure compliance with this administrative regulation.

(3) If [when] cabinet approval is obtained, [no] changes shall not be made to the plans and specifications which would alter or affect the location, capacity, type of treatment process, discharge location, or quality of effluent without issuance of a modified permit from the cabinet.

(4) If a proposed facility will become a part of a sewer system served by a regional facility or has a projected average daily design capacity of 10,000 gpd or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer.

(5) The plans shall be accompanied by engineering calculations necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1)(a) Facilities, except extended aeration package WWTPs with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the “Recommended Standards for Wastewater Facilities” of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, commonly referred to as “Ten States’ Standards”, 1980 edition, incorporated by reference in Section 29 of this administrative regulation. Deviations from the “Ten States’ Standards” requirements may be approved if the applicant submits a written request for a deviation with the basis for the request. The basis for the deviation request shall be supported by current engineering practice. Some references to current engineering practice may be found in any “Manual of Practice” published by the Water Environment Federation and “Wastewater Engineering Treatment, Disposal, Reuse”, Third Edition, by Metcalf and Eddy, Inc.

(b) Other practices may be required by the cabinet based on the cabinet’s best professional judgment that the practices are necessary for the protection of public health and the environment.

(c) Other practices may be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred and that water quality standards have not been violated.

(2) Extended aeration package WWTPs, with an average daily design capacity less than 100,000 gpd shall comply with Section 10 of this administrative regulation and any other applicable section.

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Protect those minimum conditions applicable to all waters of the Commonwealth found in 401 KAR 5:031;
(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030;
and
(c) Be in accordance with any general or particular facility requirement mandated by 401 KAR Chapter 5.

(4) Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of ± 10 percent. The flow measuring device shall measure all flow discharged by the WWTP including any bypasses. An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP. Flow measuring devices for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

5. Bypass or overflow structures of any type shall not [No bypass or overflow structure of any type shall be constructed in any sewer line or pump station or at any WWTP unless specifically approved by the cabinet in writing.]

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from:

(a) The owner of the sewer line extension stating that the owner will accept operation and maintenance responsibilities for the sewer line extension when it is constructed;
(b) The owner of the sewer system stating that the owner approves the connection and accepts responsibility for the additional flow;
and
(c) The owner of the WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection is not subject to excessive infiltration or excessive inflow. The cabinet may deny a sewer line extension for that portion of the sewer system if [when] the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and is being implemented.

(4) The applicant shall demonstrate that the WWTP which receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow. The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line. This limitation includes manholes, gravity sewer lines, and appurtenances.

6. (a) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method. An infiltration-exfiltration test shall be performed with a
minimum positive head of two (2) feet. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan;
(b) Enhances water quality; and
(c) Protects public health and safety.

(8) Gravity sewer lines and force mains shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second. The roughness coefficient used in the Manning or Kutter's formula shall be 0.013 or the "C" factor used in the Hazen-Williams Formula shall be 100. If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used. Roughness coefficients between 0.011 and 0.111 may be considered for other pipe materials if sufficient documentation of experimental testing is approved by the cabinet.

(9) Gravity sewer lines and force mains shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If gravity sewer lines and force mains are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum size for conventional gravity sewer lines shall be eight (8) inches, except that a six (6) inch sewer line may be approved if no future extension is possible. Alternative type sewer systems may be approved if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply to building sewers which serve single-family residences.

(13) The following building sewers are exempt from the requirements of this administrative regulation:

(a) Gravity sewers which:

1. Have a diameter of less than eight (8) inches and discharge directly to the sewer main;
2. Serve a single-family residence building or a multifamily residence building with four (4) dwelling units or less;
3. Serve a single office building or a single mercantile building with an occupant load of less than thirty (30) persons.

(b) Force main sewers, regardless of the location of the pump station from which:

1. Have a length of less than 500 feet and discharge directly to a gravity sewer main;
2. Serve a single-family residence building or multifamily residence building with four (4) dwelling units or less;
3. Serve a single office building or a single mercantile building with an occupant load of less than thirty (30) persons. [The length of building sewers shall be less than or equal to 500 feet. This subsection shall not apply to building sewers which serve single-family residences.]

(14) Sewer lines shall be located at least fifty (50) feet away from a stream which appears as a blue line on a USGS 7.5 minute topographic map except where the sewer alignment crosses the stream. The distance shall be measured from the top of the stream bank. The cabinet may allow construction within the fifty (50) foot buffer if adequate methods are used to prevent the soil from entering the stream.

(15) Gravity sewer lines and force mains that cross streams shall be constructed by methods which maintain normal stream flow and allow for any excavation. Water pumped from the excavation shall be contained and allowed to settle prior to re-entering the stream. Excavation equipment and vehicles shall operate outside of the flowing portion of the stream. Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) Pump station wetwells shall be sized such that, based on the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) Pump station wetwells shall have a vent.

(18) Pump stations shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have automatic air release valves.

(20) The applicant shall submit a performance curve for proposed pump stations.

(21) A simplex design shall be used only for pump stations which serve an individual residence or business and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and facilities with KIMOPs.

(1) For each regional WWTP, the cabinet will review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months of the annual average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to subsection (2) of this section:

(a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or
(b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet may deny the approval of any sewer line extension until the owner of the WWTP commits to addressing the potential overload condition identified in subsection (1) of this section. The owner may address the condition by:

(a) Demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount. The cabinet will review the request and if justified, shall issue a revised average daily design capacity for the WWTP by issuing a modification to the KPDES permit;
(b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or
(c) Performing other remedial measures which address the condition.

(3) Sewer line extensions which are of sufficient flow or add sufficient load to exceed the remaining design capacity of the WWTP or exacerbate water quality problems may be denied.

(4) The owners of the following facilities shall conduct a study of the sewer system or the affected portion of the sewer system which complies with subsections (5) and (6) of this section:

(a) Regional WWTPs with reported average flows or organic loads which exceed the percent identified in subsection (1)(a) or (b) of this section, as applicable, and KIMOP facilities which either:

1. Receive more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-four (24) hour period exclusive of industrial flow; or
2. Receive more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow.

(b) Regional WWTPs, sewer systems served by a regional WWTP, or facilities with KIMOPs which are subject to excessive infiltration or excessive infiltration.

(5) The study shall determine if the infiltration-inflow can be removed in a cost-effective manner by using a twenty (20) year present worth cost analysis and if not, shall identify the modifications to the sewer system, affected portion of the sewer system, or the WWTP that are necessary to transport and treat the infiltration-inflow. A schedule for completion of the necessary modifications is-

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shall also be prepared. The study and schedule shall be submitted to the cabinet for review and approval.

(6) For the infiltration-inflow study of the sewer system or the affected portion of the sewer system, the owner shall:
(a) Use a map of the sewer system or the affected portion of the sewer system to select manholes for the installation of flow monitoring equipment;
(b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;
(c) Conduct physical surveys, smoke tests, and dye water studies of the affected portion of the sewer system;
(d) Evaluate the cost-effectiveness of transportation and treatment versus connection of the infiltration-inflow sources by using a twenty (20) year present worth cost analysis;
(e) If justified, internally inspect the sewer lines in the affected portion of the sewer system to determine the rehabilitation locations and methods;
(f) Develop plans for rehabilitation of the affected portion of the sewer system or modifications to the affected portion of the facility necessary to transport and treat all flows; and
(g) Develop a schedule for completion of the rehabilitation or modifications.

(7) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the approved schedule. The cabinet may deny further sewer line extensions if the owner is not meeting or is not making acceptable progress toward meeting the approved schedule.

Section 10. Extended Aeration Package WWTP Requirements. This section shall apply [apply] to extended aeration package WWTPs intended to treat only domestic sewage but shall [does] not apply to extended aeration package WWTPs which serve an individual residence.

(1) A bar screen shall be provided for each plant, except those with trash traps.
(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.
(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.
(4) The clarifier shall have a minimum detention time of four (4) hours based on the average design flow, a surface overflow rate of less than 1,000 GPD/ft<sup>2</sup>, and a solids loading of less than thirty-five (35) lb/ft<sup>2</sup> based on the peak daily design flow rate.
(5) A positive sludge return shall be provided.
(6) A source of water shall be provided for cleanup. If a potable source is provided, backflow preventers shall be installed to protect the water supply.
(7) Fencing with a lockable gate shall be installed around the plant site.
(8) An all-weather access road to the plant shall be provided.
(9) A sludge holding system shall be provided for each large WWTP. The sludge holding system shall:
(a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;
(b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;
(c) Be designed to prevent overflows; and
(d) Transport supernatant to the aeration chamber.
(10) For large WWTPs, motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.
(11) If food grinders are used, treatment units shall be designed for treating the additional BOD loading; additional treatment processes may be required.
(12) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration. If a diffused air system is used, a minimum blow capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided. If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.
(13) WWTPs with monthly average permit limits for CBOD of twenty (20) mg/l or less shall provide additional treatment units.

(14) WWTPs which serve restaurants or other similar establishments where food is prepared and served shall be designed to treat the additional BOD loading.
(15) Effluent discharge piping for new WWTPs, except regional facilities, shall be designed to transport sewage to facilitate a future connection to a regional facility.
(16) Used package extended aeration WWTPs may be used if the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process which meets the following requirements:
(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow;
(b) A chlorination system with a flow or demand proportional feed system. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size. WWTPs shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits;
(c) A chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal blow variations. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average design flow or fifteen (15) minutes based on peak hourly flow. WWTPs shall also have a dechlorination system if necessary to meet the effluent limits;
(d) Other disinfection processes providing equivalent treatment may be approved by the cabinet.
(2) Tablet type chlorination equipment shall not be used in intermediate or large WWTPs.

Section 12. Requirements for Flow Measuring Devices. This section shall apply [apply] to new large WWTPs. Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of ± ten (10) percent. The flow measuring device shall measure all flow received at the WWTP. An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.
(1) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.
(b) Multiple flow measuring devices shall be provided for the following:
1. WWTPs that store and hydrographically control the release of effluent;
2. WWTPs with flow equalization facilities which are designed to store more than the volume required to dampen the diurnal blow variations;
3. WWTPs with lagoons that have a detention time of greater than twenty-four (24) hours;
4. WWTPs with the capability to bypass a treatment process; and
5. WWTPs with more than one (1) discharge point.
(2) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:
(a) The weir shall be installed perpendicular to the axis of flow and there shall be no leakage at the weir edges or bottom;
(b) The weir plate shall be level and adjustable;
(c) The sides of a rectangular contracted weir shall be vertical;
(d) The angles of V-notch weirs shall be cut precisely;
(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;
(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;
(g) For Weirs other than suppressed, rectangular weirs, the distance from the sides of the weir to the sides of the approach channel shall be more than (1) foot or two (2) times the maximum weir head, whichever is greater [This does not apply to suppressed rectangular weirs];
(h) Air shall circulate freely under, and on both sides of, the
nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j) The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head shall be [it is] two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipollotti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(2) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for Hs and Hc to determine if submergence occurs.

(4) Other types of flow measuring devices may be approved by the cabinet if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. The cabinet shall determine the reliability categories of a WWTP based on factors such as the size of the discharge, the size of the receiving stream, and downstream water quality classifications.

(1) WWTP reliability categories are divided into three (3) grades:

(a) Grade One WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of all treatment processes and disinfection;

(b) Grade Two WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

(c) Grade Three WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary and primary treatment processes and disinfection.

(2) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade One reliability category if the average daily design capacity is greater than twenty (20) percent of the seven (7) day, ten (10) year (7Q10) low flow of the receiving stream.

(3) WWTPs which discharge into sinkholes or disappearing streams shall meet the requirements of a Grade One reliability category.

(4) WWTPs which discharge within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area shall meet the requirements of a Grade One reliability category.

(5) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade Two reliability category if the average daily design capacity is equal to or less than twenty (20) percent of the 7Q10 low flow.

(6) Large WWTPs which discharge within five (5) miles upstream of the head of an embayment when the lake is at normal pool elevation shall meet the requirements of a Grade Two reliability category.

(7) Large WWTPs shall, at a minimum, meet the requirements of Grade Three reliability category.

(8) WWTPs which are subject to reliability requirements shall:

(a) Provide sufficient units to allow for cleaning and repair without causing a violation of effluent limitations or a bypass from the sewer system or the WWTP. This shall [will] require storage or treatment capability sufficient to contain or treat the volume of the largest tank and the flow received during the time needed to drain, complete cleaning, and accomplish any anticipated repair without causing a permit violation or bypass of any treatment process; and

(b) Provide alternate power from the connection of at least two (2) independent power sources such as substations, an emergency generator, or comparable protection.

Section 14. Requirements for Trash Traps. Trash traps shall not be used on WWTPs with a design capacity of larger than 100,000 gpd. Trash traps shall have an outlet baffle, be accessible to cleaning equipment, have a right access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section.

(1) For small WWTPs, the trash trap volume shall be fifteen (15) percent of the average daily design flow.

(2) For intermediate or large WWTPs with a design capacity of 100,000 gpd or less, the trash trap volume shall be as indicated in the following table for the appropriate WWTP capacity. For capacities not included, the volume shall be interpolated.

<table>
<thead>
<tr>
<th>WWTP Capacity (GPD)</th>
<th>Trash Trap Volume (Gallons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10000</td>
<td>1500</td>
</tr>
<tr>
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<td>3000</td>
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<tr>
<td>90000</td>
<td>13500</td>
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<tr>
<td>100000</td>
<td>15000</td>
</tr>
</tbody>
</table>

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.

(2) Filter areas larger than 900 square feet shall have multiple beds.

(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.

(4) Each discharge point shall have a minimum of 300 square feet of filter surface.

(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.

(6) Distribution piping shall be designed to drain properly.

(7) Underdrains shall be spaced on ten (10) feet centers or less.

(8) Gravel shall be placed around the underdrains and to a depth of six (6) inches over the top of the underdrains.

(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeter.

(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.
Section 16. Requirements for Rapid Sand or Mixed Media Filters. Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area. If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot. A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) Flow equalization basins shall have:
(a) A variable flow weir box set to deliver flow at a treatable rate;
(b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;
(c) An emergency overflow to an appropriate point in the treatment scheme; and
(d) Sufficient volume to dampen the diurnal flow variations.
(2) If no site specific information nor similar flow pattern is available, the flow equalization basin volume shall be based on the following formula:

\[ V = (1 - \frac{1}{24}) \times Q \]

Where:
- \( V \) is the required volume for the flow equalization basin;
- \( t \) is the number of hours flow is generated; and
- \( Q \) is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.

(3) Flow equalization basins with earth embankments shall be constructed with a slope no steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.

(4) For flow equalization basins constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

Section 18. Requirements for Wastewater Treatment Lagoons. (1) BOD loading shall be less than thirty-five (35) pounds per day per acre of lagoon surface for nonaerated primary lagoon systems, fifty (50) pounds per day per acre of lagoon surface for nonaerated polishing lagoons, and 150 pounds per day per acre of lagoon surface for aerated lagoons.

(2) The lagoon design submittal shall provide details on the aeration system proposed including the type, location, and capacity of the aeration units; the operating depth; the area of the lagoon at the operating depth; permeability and thickness of the lagoon liner; anticipated ultimate wastewater flow; and influent wastewater characteristics. New lagoon systems shall be designed to treat a raw wastewater BOD of at least 240 mg/l. The lagoon design shall be evaluated by the method discussed in "Ten States Standards", incorporated by reference in Section 29 of this administrative regulation, and the predicted BOD remaining shall be less than the required effluent concentration.

(3) Lagoons shall be at least 200 feet from any present or future residence.

(4) Non-aerated primary lagoons shall have a minimum detention time of ninety (90) days.

(5) The "Ten States Standards" requirement for vegetation to be established prior to filling the lagoon shall not apply.

(6) The cabinet may approve a lagoon with an embankment slope steeper than 1:3 (one to three) if supported by geotechnical and slope stability studies.

(7) The applicant shall indicate how basins constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs Which Serve Schools. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements shall apply to WWTPs which serve schools:

(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation.

(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for high schools.

(3) The secondary clarifier shall be sized to provide a maximum surface loading, at the average design flow, of 300 GPD per square foot of clarifier surface area. If no flow equalization basin is provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPD per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs Which Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which serve multifamily residential developments. Multifamily residential developments including subdivisions, condominiums, apartments, and mobile home parks shall provide one (1) or more of the following measures for additional reliability:

(1) Blowers and motors shall be installed sufficient to handle the load if the largest unit is not available for service;

(2) An alternate source of power;

(3) Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs Which Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which propose effluent disposal by spray irrigation.

(1) One (1) acre of spray field shall be provided for each 1,000 GPD of treated wastewater. Higher application rates may be approved if justified by a detailed design based on site specific information.

(2) The spray field shall have less than a six (6) percent slope, have moderate to high soil permeability, and have sufficient vegetative growth to promote absorption, evaporation, and transpiration.

(3) A WWTP capable of meeting secondary treatment which meets the requirements of 401 KAR 5.045 and disinfection shall be provided prior to irrigation.

(4) A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.

(5) A spray irrigation field for an individual residence shall have:

(a) At least three (3) sprinkler heads;

(b) A spray area larger than 0.19 acre; and

(c) A barrier around the spray field.

(6) The spray irrigation field shall be located at least 200 feet from the nearest dwelling.

(7) Effluent from the spray irrigation field shall be contained on the owner's property.

Section 22. Requirements for WWTPs which Serve an Individual Residence. (1) Wastewater plants intended to serve an individual residence and eligible for a general KPDES permit under 401 KAR 5.055 shall have the following treatment processes: extended aeration WWTP, filtration, and disinfection. The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5.045 without additional treatment units.

(2) A minimum lot size of one (1) acre shall be provided for WWTPs located within a residential subdivision.

(3) WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

Section 23. Additional Requirements for WWTPs which Serve Car Washes or Laundries. In addition to the requirements of Sections 10 to 18 of this administrative regulation, WWTPs which serve commercial or fleet car washes, commercial laundries, or laundries serving commercial or institutional establishments, shall have an average daily flow which is at least five (5) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. Construction shall be completed within twelve (12) months.
unless additional time is requested. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained before construction may begin. The cabinet may allow a single twelve (12) month extension to begin construction if site conditions have not changed.

(2) The permittee shall submit the certification from the engineer that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion of construction. The permittee may submit the certification for projects not designed by an engineer. Failure to comply with this subsection may result in the denial of sewer line extensions to the incomplete facility.

(3) The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(4) Permit conditions.
   (a) Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and treated as a part of the permit.
   (b) The following conditions shall apply to all construction permits:
      1. There shall be no deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized in writing by the cabinet.
      2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5.
      3. When the construction of the system is completed, the owner shall submit a written certification to the cabinet that the facility has been constructed and tested in accordance with the approved plans and approval conditions. Failure to certify may result in penalty assessments or future approvals being withheld.
   (c) The following conditions shall also apply to construction permits issued to WWTPs which discharge to waters of the Commonwealth:
      1. If violations of the standards of 401 KAR Chapter 5 result from the discharge of the treated effluent, the owner shall provide additional treatment or an extension of the effluent line;
      2. If a sewer system served by a regional facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility;
      3. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required for this cabinet and other state, federal, and local agencies.
      4. The construction permit for agricultural wastes handling systems may be used as an interim operational permit until the operational permit is issued or denied.
      5. The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 25. Kentucky No Discharge Operational Permits (KNDOPs). (1) Applicability. These permits are issued to facilities which do not discharge to waters of the Commonwealth, including agricultural wastes handling systems and facilities which dispose of their effluent by spray irrigation. The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(2) Permit conditions. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as part of the permit. The following conditions shall apply to all KNDOPs:
   (a) There shall be no point source discharge of wastewater from the facility.
   (b) The permit authorizes operation only of the WWTP described in the permit in the manner and under the conditions described in the permit application and supporting documents as approved by the cabinet in the permit.
   (c) The permit shall not be construed as authorizing any operation which is otherwise in contravention of any statute, administrative regulation, ordinance, or order of any governmental unit. The permit shall not be construed to authorize the creation or maintenance of a nuisance.
   (d) The permit shall be subject to revocation or modification by the cabinet as set forth in KRS Chapter 224. Commencement of a routine point source discharge shall result in a permit revocation.
   (e) Any permit shall be issued under the provisions of KRS Chapter 224 and administrative regulations promulgated pursuant thereto. Issuance of the permit shall not relieve the permittee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.
   (f) If applicable, the waste materials removed from the settling basin shall be disposed of according to the requirements of the Division of Waste Management in 401 KAR Chapters 30 through 49.

(g) Land application which results in runoff to a stream is prohibited.

Section 26. Kentucky Intermunicipal Operational Permits (Kl-OPs). These permits are issued to publicly owned sewer systems which discharge to a WWTP or a sewer system which is owned by another person. These permits shall not apply to sewer systems with less than 5,000 linear feet of sewer line. The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet. The cabinet may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. Operational permits required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance, and shall be renewed to maintain continuous operation.

(1) The cabinet's permit may specify the type of monitoring or analysis required for a facility and the frequency that the monitoring or analysis shall be performed and reported to the cabinet.
   (2) The facility, including backup or auxiliary components, shall be operated and maintained to ensure compliance with permit requirements and this administrative regulation.
   (3) The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 28. Alternative Requirements. The cabinet may approve alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation based on the cabinet's best professional judgment that the alternative measure provides sufficient treatment. The applicant shall demonstrate that any alternatives requested by the applicant provide sufficient treatment.

Section 29. Documents Incorporated by Reference. (1) The following materials are incorporated by reference;

(a) [The material is available for inspection and copying, subject to the copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.]
   (2) "Recommended Standards for Wastewater Facilities", "1990 Edition", Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers. This document is also known as the "Ten States' Standards".

(b) [and may be obtained from Health Education Services, P.O.
Box 7126, Albany, New York 12224; phone 518/430-7286.
(2) The following document and forms may be obtained from the Division of Water, KPDES Branch unless otherwise noted, 14 Reilly Road, Frankfort, Kentucky 40601:
(a) "Water Policy Memorandum No. 84-02, Five Mile Limit Policy," signed by P. Michael Taimi, August 28, 1984**, Facilities Construction Branch;
(b) [95] "Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W (9/96)", Facilities Construction Branch;
(c) [96] "Construction Permit Application for Sewer Line Extension, DEP 7071-S (9/96)", Facilities Construction Branch;
(d) [97] "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch;
(e) [98] "No Discharge Certification, DEP 7032-CO (9/96)";
(f) [99] "Kentucky No Discharge Operational Permit Application, DEP 7032-NO (9/96)";
(g) [100] "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling Systems, Short Form B, DEP 7032-B-ND (9/96)";
(h) [101] "Kentucky Intermunicipal Operational Permit Application, DEP 7010 (9/96).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: December 5, 2003
FILED WITH LRC: December 5, 2003 at 3 p.m.
CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-011.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224 and establishes conditions for construction of facilities under this chapter. This administrative regulation also provides for a schedule of fees to recover the cost of issuance for certain classes of permits.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce public health risks and improve water quality and the efficiency of treatment facilities through issuance and review of permits.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation, in conjunction with other administrative regulations in 401 KAR Chapter 5, com- prise the Commonwealth's program for implementation of KRS 224.10-100 by providing for the issuance of permits for the construction, modification, and operation of regulated facilities in order to improve water quality through control of bypasses, overflow, and treatment efficiency.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps provide for the prevention, abatement, and control of water pollution by providing for the review and issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224 and establishes conditions for construction of facilities under this chapter. This issuance of permits and conditions seeks to prevent unnecessary bypasses, overflows, and degradation that would negatively impact waters of the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will provide exemptions from the requirements of this administrative regulation for gravity sewers and force main sewers which meet the specific criteria outlined in Section 8(13) of this administrative regulation. Cross-references in this administrative regulation have been amended to reflect effective changes to other administrative regulations since this regulation was last amended in order to update this administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ease requirements on certain segments of the regulated community, to clarify requirements for force main sewers with pump stations, and to update cross-references.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment seeks to relax requirements for certain segments of the regulated community, while still maintaining a comprehensive water pollution control program. This amendment also updates cross-references for clarity and accuracy.
(d) How the amendment will assist in the effective administration of the statutes: This amendment, while decreasing the burden to certain regulated facilities, will not prevent the administrative regulation from meeting obligations of the governing statute. Revision of the cross-references will assist in understanding the intention of the administrative regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation requires entities that construct, modify, or operate a facility to have a permit. For the purposes of this administrative regulation, a facility means a sewage system other than septic tanks, pretreatment facilities regulated by an approved program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090, and includes wastewater treatment plants, and wastewater pump stations. Applicants for construction permits include individuals, corporations, and municipalities. This administrative regulation also requires an operational permit for all facilities; however, most of the operational permit provisions are satisfied by those facilities that have valid permits issued under the Kentucky Pollutant Discharge Elimination System (KPDES) program pursuant to 401 KAR 5:090 and 401 KAR 5:080. Operational permits are for those facilities that do not discharge to waters of the Commonwealth (agricultural facilities, spray irrigation systems, etc.) and those operational permits for intermunicipal sewer systems (KIMOs). These permitting requirements exist in the current administrative regulation, and these amendments would seek to reduce previous requirements on certain segments of the regulated community. Entities indirectly affected by this administrative regulation include those customers served by wastewater treatment facilities.
(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: Gravity sewers and force main sewers that meet the specific requirements outlined in Section 8(13) of this administrative regulation would be exempt from the requirements of this administrative regulation in this amendment. All affected entities would benefit from revision of out-dated cross-references.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The cost of implementing this amendment is not expected to change the initial cost of implementing this administrative regulation. This amendment should not result in additional responsibilities or impacts on the cabinet. Rather, fewer requests for permits should expedite the process and result in cost savings to this agency.
(b) On a continuing basis: The cost of implementing this amendment is not expected to increase the annual costs of implementing this administrative regulation. Rather, fewer requests for permits should expedite the process and result in cost savings to this agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet currently receives monies from the General Fund, as appropriated by the Kentucky General Assembly, to implement this regulation. Permitting fees from the permittees are utilized to offset processing costs. The cabinet does not anticipate the need for additional revenue to implement this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, it is if an amendment: Although this regulation does provide for fees, no new fees or fee increases are proposed in this amendment. The cabinet does not anticipate the need for additional funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees in this administrative regulation are currently being implemented. This administrative regulation does provide for fees but this amendment does not increase, decrease, or change any fees or fee schedules.

(9) TIERING: Is tiering applied? Yes, this administrative regulation includes examples of tiering. There are different fees for different sized facilities. Larger facilities are more complex and require more staff time to review and approve; therefore, a higher fee is justified for larger facilities. It should be noted that this amendment does not change any fee requirements or establish any new fee requirements. This administrative regulation also tiers with regard to many requirements. There are different requirements for differently sized facilities. Larger, more complex facilities require more complex design and construction criteria. Other examples of tiering include different requirements for flow measuring devices, disinfection devices, and reliability for specific facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal statute or regulation relating to the construction requirements for wastewater treatment facilities.

2. State compliance standards. State compliance standards are found in KRS 224.10-100(19).

3. Minimum or uniform standards contained in the federal mandate: There are none.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, there are no federal requirements related to this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no federal requirements related to this 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? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation affects the divisions of local government that provide sewer and wastewater treatment services to citizens. This is usually the public works or municipal utilities division or a sanitation district.

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 relates to sewer service and wastewater treatment services.

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 (+/-): No effect on revenue of a local government is anticipated.

   Expenditures (+/-): Construction of new wastewater treatment facilities or modifications to these facilities may result in expenditures resulting from complying with this administrative regulation. Major expenditures of the local government will usually be passed on to customers through increased sewer usage fees or possibly increased taxes. This amendment is not expected to effect expenditures of local government.

   Other explanation: Although this administrative regulation in its established form may affect expenditures of local government, this amendment is not anticipated to alter existing programs or expenditures.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Commentary)

401 KAR 5:026. Designation of uses of surface waters.

RELATES TO: KRS 146.220 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 146.900, 224.01-010 [224.01-040], 224.01-040, 224.16-050, 224.16-070, 224.70-100 to 224.70-140, 224.71-100 to 224.71-145, 224.73-100 to 224.73-120 [224.40-040, 224.44, 224.45, 224.46, 224.49, 224.50, 224.60, 224.70, 224.71, 224.73].

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.600, 146.619, 224.01-100, 224.16-050, 224.16-070, 224.70-100, 224.70-110, 14 C.F.R. Part 131, 16 U.S.C. 1271 et seq., 1531 et seq., 33 U.S.C. 1311, 1313, 1314, 1316, 1341.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 5:022, 5:029, 5:030, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 5:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002.

Section 1. Scope of Designation. (1) Surface waters listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1) except as specified in 401 KAR 5:031, Sections 5 and 7, or unless redesignated in accordance with the procedures of this administrative regulation.

(2) Designated uses are:
   (a) Warm water aquatic habitat;
   (b) Cold water aquatic habitat;
   (c) Primary contact recreation;
   (d) Secondary contact recreation;
   (e) Domestic water supply; and
   (f) Outstanding state resource water.

(3) Listed waters shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 5:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 5:031, Section 19 or 21 [9 or 10].

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 5:031, Section 8.

Section 2. Redesignation of Surface Water Uses. (1) Surface waters may be redesignated only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation. Before redesignating a surface water, the cabinet shall pro-
vide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration that the designated use is unattainable because:
(a) Naturally occurring pollutant concentrations prevent the attainment of the use;
(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;
(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such modifications in a way that would result in the attainment of the use;
(e) Physical conditions related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the aquatic life use; or
(f) Controls more stringent than that required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 incorporated by reference in Section 6 of this administrative regulation.

(5) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 5:029 and 401 KAR 5:030.

Section 3. Documentation for Redesignations. (1) A person may request redesignation of surface water uses by petition to the cabinet. The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2) The cabinet may propose redesignations of surface water uses. The cabinet shall provide documentation for those surface waters that it proposes for use redesignations.

(3) Documentation to support the redesignation of a surface water of the Commonwealth shall be:
(a) A United States Geological Survey 7.5 minute topographic map or its equivalent approved by the cabinet showing those surface waters to be redesigned, with a description consisting of a river mile index with existing and proposed discharge points;
(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;
(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;
(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;
(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;
(f) The frequency of occasions when there is no natural flow in the surface water and the 70% and harmonic mean flow values for the surface water and adjacent surface waters;
(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;
(h) The proposed designated uses for the surface water in question; and
(i) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources.

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing the following information:
(a) The name and address of the petitioner;
(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;
(c) The proposed use redesignations;
(d) A brief abstract of the supportive documentation which demonstrates that the redesignation is appropriate;
(e) The appropriate water quality criteria for the surface water based on the proposed designated use;
(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and
(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables below are the use designations for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations are:

<table>
<thead>
<tr>
<th>Water Body (Stream)</th>
<th>Zone</th>
<th>County</th>
<th>Use Designation</th>
<th>Exceptions To Specific Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Big Sandy River</td>
<td>WAH</td>
<td>Boyd</td>
<td>WAP, PCC, SCR</td>
<td></td>
</tr>
</tbody>
</table>

(2) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primary contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(3) Exceptions to specific criteria in 401 KAR 5:031 that apply to particular surface waters are shown in the tables of surface water use designations in this section. All other criteria in 401 KAR 5:031 applicable to the listed use designations shall apply to these surface waters.
<table>
<thead>
<tr>
<th>LAKES AND RESERVOIRS</th>
<th>LITTLE SANDY RIVER BASIN</th>
<th>LAKES AND RESERVOIRS</th>
<th>TYGARTS CREEK BASIN</th>
<th>LICKING RIVER BASIN</th>
<th>KENTUCKY RIVER BASIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hood Creek</td>
<td>Source to Wheeler Branch</td>
<td>Lawrence</td>
<td>WAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Levina Fork of Big Sandy River</td>
<td>Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)</td>
<td>Pike</td>
<td>WAH, PCR, SCR, DWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paint Creek of Levina Fork</td>
<td>River Mile 8.3 (Pamsville Lake Dam) to Levina Fork</td>
<td>Johnson</td>
<td>CAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Russell Fork of Big Sandy River</td>
<td>Kentucky-Virginia State Line (River Mile 15.9) to Levina Fork</td>
<td>Pike</td>
<td>WAH, PCR, SCR, DWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tug Fork of Big Sandy River</td>
<td>Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River</td>
<td>Lawrence</td>
<td>WAH, PCR, SCR, DWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dewey</td>
<td>Entire reservoir</td>
<td>Floyd</td>
<td>WAH, PCR, SCR, DWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fishtrap</td>
<td>Entire reservoir</td>
<td>Pike</td>
<td>WAH, PCR, SCR, DWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paintsville</td>
<td>Entire reservoir</td>
<td>Johnson</td>
<td>WAH, CAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Big Caney Creek</td>
<td>Source to Grayson Lake</td>
<td>Elliott</td>
<td>CAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Big Sinking Creek</td>
<td>River Mile 6.0 to Little Sandy River</td>
<td>Carter</td>
<td>WAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Laurel Creek</td>
<td>Source to Little Sandy River</td>
<td>Elliott</td>
<td>CAH, PCR, SCR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Little Sand River</td>
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<td>Source to Ohio River</td>
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<td>White Oak Creek</td>
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<td>Source to North Fork of Licking River</td>
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<td>Fleming Creek</td>
<td>Source to Licking River</td>
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<td>River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)</td>
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<td>Source to Dix River</td>
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<td>Leslie</td>
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<td>Menifee/ Wolfe</td>
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<td>Source to North Fork of Elkhorn Creek</td>
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<td>Swift Camp Creek</td>
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<td>Town Branch</td>
<td>Source to South Fork of Elkhorn Creek</td>
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<td>War Fork of Station Camp Creek</td>
<td>Source to River Mile 6.5</td>
<td>Lee</td>
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<td>River Mile 6.5 to River Mile 2.0</td>
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<th>Reservoir Name</th>
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<th>County/Source of Flow</th>
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<td>Entire Reservoir</td>
<td>Perry</td>
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<td>Carr Fork</td>
<td>Entire Reservoir</td>
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<td>Fishpond</td>
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<td>Mill Creek</td>
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**SALT RIVER BASIN**

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<td>Hardin/Bullitt</td>
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<td>Chenoweth Run</td>
<td>Source to Floyd Fork</td>
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<td>Currys Fork</td>
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<td>Oldham</td>
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<td>Floyds Fork</td>
<td>Source to Salt River</td>
<td>Bulitt</td>
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<td>Mill Creek</td>
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<td>Rolling Fork of Salt River</td>
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<td>River Mile 62.6 to River Mile 53.6</td>
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<td>Salt River</td>
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<td>Ganter Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson</td>
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<td>Running Spring</td>
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<td>Mud River</td>
<td>Source to Green River</td>
<td>Butler/Muhlenberg</td>
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<td>Nolin River</td>
<td>Source to River Mile 64.3 (Headwaters of Nolin Lake)</td>
<td>Hart/Grayson</td>
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<td>Nolin River</td>
<td>River Mile 7.6 (Nolin Lake Dam) to Green River</td>
<td>Edmonson</td>
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<tr>
<td>Rough River</td>
<td>Source to River Mile 133.8 (Headwaters of Rough River Lake)</td>
<td>Hardin</td>
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<td>Rough River</td>
<td>River Mile 89.3 (Rough River Lake Dam) to River Mile 88.5 [72.4]</td>
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<td>Rough River</td>
<td>River Mile 72.4 to Green River</td>
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<td>Rough River</td>
<td>River Mile 88.5 to River Mile 74.2</td>
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<td>River Mile 74.2 to River Mile 73.6</td>
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<td>River Mile 73.6 to Green River</td>
<td>Ohio/Grayson</td>
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<td>Roundstone Creek</td>
<td>Source to Hwy 1140 (River Mile 3.5)</td>
<td>Hart</td>
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<td>Sharp’s Branch</td>
<td>Source to West Fork of Drakes Creek</td>
<td>Simpson</td>
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<td>River Mile 30.15 (Kentucky/Tennessee State Line) to Hwy 311E (River Mile 23.6)</td>
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<td>River Mile 23.6 to Drakes Creek</td>
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<td>Source to Confluence with Middle Fork of Drakes Creek</td>
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<td>Wiggington Creek</td>
<td>Source to Gasper River</td>
<td>Logan</td>
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<td>LAKES AND RESERVOIRS</td>
<td>Entire Reservoir</td>
<td>Barren/Allen</td>
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<td>Trigg</td>
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<td>Source to Livingston Creek</td>
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<td>Source to Red River</td>
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<td>Crab Orchard Creek/Vaughn Ditch</td>
<td>Source to Tradewater River</td>
<td>Webster</td>
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<td>Source to Ohio River</td>
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<td>Source to Hwy 1628 (River Mile 5.15) to River Mile 848.0</td>
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<td>Ohio River</td>
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<td>Ohio River</td>
<td>River Mile 865.0 to River Mile 867.0</td>
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<td>Ohio River</td>
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<td>Ohio River</td>
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<td>Paddy's Run</td>
<td>Source to Ohio River</td>
<td>Jefferson</td>
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<td>Sinking Creek</td>
<td>Source to Hwy 259 (River Mile 4.0)</td>
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<td>White Oak Creek</td>
<td>River Mile 1.08 to Ohio River</td>
<td>Greenup</td>
<td>SCR</td>
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401 KAR 5:031, Section 2(1)(d) and (2) do not apply
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<tr>
<th>LAKES AND RESERVOIRS</th>
<th>Metropolis</th>
<th>Entire Lake</th>
<th>McCracken</th>
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<tr>
<td>Swan</td>
<td>Entire Lake</td>
<td>Ballard</td>
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**MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)**

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<tbody>
<tr>
<td>Bayou de Chien</td>
<td>Source to River Mile 1.0</td>
<td>Hickman</td>
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<tr>
<td>Cane Creek of Bayou de Chien</td>
<td>Basin</td>
<td>Graves</td>
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<td>Confluence with Ohio River to River Mile 947.0</td>
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**UPPER CUMBERLAND RIVER BASIN**

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<td>Whitely</td>
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<td>Whitely</td>
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<td>McCreary</td>
<td>WAH, PCR, SCR</td>
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<td>Basin</td>
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<td>CAH, PCR, SCR, OSRW</td>
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<td>McCreary</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>Laurel</td>
<td>CAH, PCR, SCR</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>Honeycutty Branch</td>
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<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
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<tr>
<td>Horse Lick Creek</td>
<td>River Mile 12.3 to Middle Fork of Rockcastle River</td>
<td>Jackson/Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Hunting Shirt Branch</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>Indian Creek</td>
<td>Source to Barren Fork</td>
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<td>CAH, PCR, SCR</td>
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<td>Jennys Branch</td>
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<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Harlan</td>
<td>WAH, PCR, SCR</td>
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<td>Kennedy Creek</td>
<td>River Mile 1.0 to Little South Fork of Cumberland River</td>
<td>Wayne</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Kilburn Fork of Indian Creek</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>Laurel Creek of Marsh Creek</td>
<td>River Mile 9.0 to River Mile 3.4</td>
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<td>Laurel Fork</td>
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<td>River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)</td>
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<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Laurel River</td>
<td>Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9</td>
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<td>CAH, PCR, SCR</td>
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<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Little Clear Creek</td>
<td>Basin from Confluence with Fuson Branch</td>
<td>Bell</td>
<td>WAH, PCR, SCR</td>
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<td>Little Poplar Creek [Poplar Creek]</td>
<td>Basin above and including East Ridge Branch</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>River Mile 3.2 (Fern Lake Dam) to Yellow Creek</td>
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<td>Marsh Creek</td>
<td>Basin above River Mile 24.0</td>
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<td>River Mile 24.0 to Confluence with Cumberland River</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
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<td>Name of River or Creek</td>
<td>Location</td>
<td>County</td>
<td>Constituents</td>
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<td>Martins Fork</td>
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<td>Mill Creek of Straight Creek</td>
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<td>Mill Creek</td>
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<td>WAH, PCR, SCR, OSRW</td>
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<td>Poor Fork of Cumberland River</td>
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<td>Poor Fork of Cumberland River</td>
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<td>River Mile 720.55 to Clover Fork of Cumberland River</td>
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<td>WAH, PCR, SCR</td>
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<td>Rock Creek</td>
<td>Basin from confluence with Jellico Creek</td>
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<td>River Mile 13.5 to River Mile 4.7</td>
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<td>River Mile 4.7 to Rockcastle River</td>
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<td>Harlan</td>
<td>WAH, PCR, SCR</td>
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<td>Sugar Run</td>
<td>Source to Cumberland Gap National Historical Park Boundary</td>
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<th>OS/RW</th>
<th>WAH, PCR, SCR</th>
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<td>Basin above Camp Blanton Lake</td>
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<td>Chain above River Mile 1.2 (includes Little White Oak Creek)</td>
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<td>Youngs Creek</td>
<td>Basie</td>
<td>Whiteley</td>
<td>WAH, PCR, SCR</td>
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**LAKES AND RESERVOIRS**

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<th>Entire Reservoir</th>
<th>Jackson</th>
<th>WAH, CAH, PCR, SCR, DWS</th>
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<td>Pulkaski</td>
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<td>Cumberland</td>
<td>Entire Reservoir</td>
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<td>Dale Hollow</td>
<td>Entire portion of Reservoir within Kentucky</td>
<td>Clinton/ Cumberland</td>
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HENRY C. LIST, Secretary
APPROVED BY AGENCY: December 3, 2003
FILED WITH LRC: December 4, 2003 at 9 a.m.
CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters of the Commonwealth, provides for redesignation of surface waters, describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth which have been assigned designated uses. The purpose of this administrative regulation is to explain redesignation of surface waters and list the designated uses currently assigned to specific surface waters of the Commonwealth.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the reader of the types of designated use categories for surface waters of the Commonwealth, to provide for redesignation of surface waters, and to list designated uses assigned to surface waters. The list of designated uses assigned to specific surface waters of the Commonwealth is a reference tool necessary for the reader to identify which designated uses apply to specific surface waters of the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 5:002, 5:029, 5:030, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation applies the criteria described in 401 KAR 5:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:02.
(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 statutes by providing for redesignation of surface waters and by listing the designated uses assigned to specific surface waters of the Commonwealth. Having the designated uses listed in this way will enable the reader to know which regulatory criteria relate to which waterway. This information is supportive to achieving compliance with administrative regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment revises designated use information for 3 previously listed surface waters, replaces 2 previously listed surface waters, and adds 14 previously unlisted surface waters.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update surface water information and assign use designations for previously unlisted surface waters. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This amendment and 401 KAR 5:002, 5:029, 5:030, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment applies the designated uses described in 401 KAR 5:031 to the surface waters of the Commonwealth. This amendment also makes all surface waters subject...
to the general criteria specified in 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by revising information on previously listed surface waters and establishing designated uses for previously unlisted surface waters. This will enable the reader to know which regulatory criteria relate to which waterway. This information is supportive of achieving compliance with administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses to the surface waters of the Commonwealth. This administrative regulation revises designated use information for three previously listed surface waters, replaces 2 previously listed surface waters, and adds 14 previously unlisted surface waters. All individuals, businesses, organizations, and governments that use the Commonwealth’s surface water for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of 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 permits imposed on dischargers may result in additional treatment outlays, training costs, and operational changes. Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Yes, tiering is applied in this administrative regulation. Any discharger into a waterway designated as cold water aquatic habitat by 401 KAR 5:026 will require dischargers into such water to meet requirements outlined in 401 KAR 5:031 that are more stringent than requirements for dischargers into surface water designated for warm water aquatic habitat. Any discharger into a waterway designated as an outstanding state resource water by 401 KAR 5:026 will also have special requirements as outlined in 401 KAR 5:031.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality designated uses for appropriate revisions.


3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.
of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 5:025, 5:026, 5:029, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 5:029, Section 1, for a point source discharge. These antidegradation procedures shall not preclude the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the Commonwealth. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the Commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

<table>
<thead>
<tr>
<th>Stream</th>
<th>Segment</th>
<th>River Miles</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red River</td>
<td>Upstream to Island off SR 1057 to Downstream Wild River Boundary at SR 746</td>
<td>49.2-68.6</td>
<td>Menifee/Wolfe</td>
</tr>
<tr>
<td>Underground River System</td>
<td>Within Mammoth Cave National Park Boundary</td>
<td></td>
<td>Edmonson/Hart/Barren</td>
</tr>
<tr>
<td>Big South Fork of Cumberland River</td>
<td>Downstream Wild River Boundary to Tennessee Stateline</td>
<td>45.0-55.2</td>
<td>McCreary</td>
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</tbody>
</table>

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if the surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 5:031, Section 8, and if the surface water demonstrates national ecological or recreational significance.

(1) Antidegradation procedure. Water quality shall be maintained and protected in outstanding national resource waters. A new discharge or expanded discharge which may result in permanent or long-term changes in water quality is prohibited. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water have no demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the Commonwealth categorized as exceptional water are listed in Table 2 of this subsection.

<table>
<thead>
<tr>
<th>Stream</th>
<th>Segment</th>
<th>River Miles</th>
<th>County</th>
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</thead>
<tbody>
<tr>
<td>Hobbs Fork</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.8</td>
<td>Martin</td>
</tr>
<tr>
<td>Hobbs Fork Unidentified Tributary</td>
<td>Hobbs Fork to Headwaters</td>
<td>0.0-0.55</td>
<td>Martin</td>
</tr>
<tr>
<td>Lower Pigeon Branch*</td>
<td>Left Fork to Headwaters</td>
<td>0.5-1.7</td>
<td>Pike</td>
</tr>
<tr>
<td>Russell Fork*</td>
<td>Clinch Field RR Yard off HWY 80 to Virginia Stateline</td>
<td>14.4-16</td>
<td>Pike</td>
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<tr>
<td>Toms Branch*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4</td>
<td>Pike</td>
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<tr>
<td>BIG SANDY RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Arabs Fork*</td>
<td>Clay Fork to Headwaters</td>
<td>0.0-4.7</td>
<td>Carter</td>
</tr>
<tr>
<td>Big Caney Creek*</td>
<td>Grayson Lake to Headwaters</td>
<td>0.0-14.9</td>
<td>Elliott</td>
</tr>
<tr>
<td>Big Sinking Creek*</td>
<td>SR 986 to Clay Fork and Arab Fork</td>
<td>10.7-15.2</td>
<td>Carter</td>
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<tr>
<td>Meadow Branch*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4</td>
<td>Elliott</td>
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<td>Middle Fork Little Sandy River*</td>
<td>Mouth to Sheepskin Branch</td>
<td>0.0-3.6</td>
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<tr>
<td>Nichols Fork*</td>
<td>Green Branch to Headwaters</td>
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<tr>
<td>Laurel Creek*</td>
<td>Carter School Rd Bridge to Headwaters</td>
<td>7.6-14.4</td>
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<tr>
<td>LITTLE SANDY RIVER BASIN</td>
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<tr>
<td>Blackwater Creek*</td>
<td>Eaton Creek to Greasy Fork</td>
<td>3.8-11.4</td>
<td>Morgan</td>
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<td>Bols Fork</td>
<td>Mouth to Landuse Change</td>
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<td>Menifee</td>
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<tr>
<td>Brushy Fork</td>
<td>Cave Run Lake Backwaters to Headwaters</td>
<td>0.6-6.0</td>
<td>Menifee</td>
</tr>
<tr>
<td>Brushy Fork*</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.7</td>
<td>Pendleton</td>
</tr>
<tr>
<td>Bucket Branch*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.9</td>
<td>Morgan</td>
</tr>
<tr>
<td>Craney Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-10.0</td>
<td>Rowan</td>
</tr>
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<td>Devils Fork*</td>
<td>Mouth to Headwaters</td>
<td>0.0-7.8</td>
<td>Morgan</td>
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<tr>
<td>Grovers Creek*</td>
<td>Kincaid Lake Backwaters to Unidentified Tributary</td>
<td>0.6-3.4</td>
<td>Pendleton</td>
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<tr>
<td>Licking River</td>
<td>SR 211 to unnamed Rd off Statey Point Rd</td>
<td>154.5-165.0</td>
<td>Bath/Rowan</td>
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<tr>
<td>North Fork of Licking River*</td>
<td>Cave Run Lake Backwaters to Devils Fork</td>
<td>9.9-14.2</td>
<td>Morgan</td>
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<td>Slabcamp Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.4</td>
<td>Rowan</td>
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<td>South Fork Grass Creek*</td>
<td>Mouth to Greasy Creek</td>
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- 1802 -
<table>
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<tr>
<td>Welch Fork*</td>
<td>Mouth to First Road Crossing</td>
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<td>West Creek*</td>
<td>Mouth to Headwaters</td>
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<td>KENTUCKY RIVER BASIN</td>
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<tr>
<td>Big Double Creek*</td>
<td>Mouth to Headwaters</td>
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<td>Clay</td>
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<tr>
<td>Bill Branch*</td>
<td>Mouth to Right Fork and Left Fork</td>
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<td>Leslie</td>
</tr>
<tr>
<td>Buffalo Creek*</td>
<td>Mouth to Right Fork and Left Fork</td>
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<td>Owosley</td>
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<tr>
<td>Cavanaugh Creek*</td>
<td>South Fork of Station Camp Creek to Foxtown Rd</td>
<td>0.0-5.3</td>
<td>Jackson</td>
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<tr>
<td>Cedarwood Branch*</td>
<td>Mouth to Headwaters</td>
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<td>Leslie</td>
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<td>Cedar Creek Unidentified Tributary*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4</td>
<td>Owen</td>
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<td>Chester Creek*</td>
<td>Mouth to Headwaters</td>
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<td>Wolfe</td>
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<td>Clear Creek*</td>
<td>Mouth to East Fork Clear Creek</td>
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<td>Clemmons Fork*</td>
<td>Mouth to Headwaters</td>
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<td>Breathitt</td>
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<td>Coles Fork*</td>
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<td>Drennon Creek*</td>
<td>Flat Bottom Road Crossing to Town Branch</td>
<td>10.5-11.9</td>
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<td>West Fork of Indian Creek to Headwaters</td>
<td>0.0-8.5</td>
<td>Menifee</td>
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<td>Elisha Creek*</td>
<td>Elisha Creek Rd Crossing to Right Fork and Middle Fork Elisha Creek</td>
<td>0.95-1.7</td>
<td>Leslie</td>
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<tr>
<td>Emily Run</td>
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<td>0.0-3.9</td>
<td>Henry</td>
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<td>Evans Fork*</td>
<td>Mouth to Headwaters</td>
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<td>Estill</td>
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<td>Failing Rock Branch*</td>
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<td>0.0-0.6</td>
<td>Breathitt</td>
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<td>Gladie Creek*</td>
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<td>Breathitt</td>
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<td>Ginnie Creek Unidentified Tributary*</td>
<td>Landuse Change to Headwaters</td>
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<td>Goose Creek</td>
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<td>Griers Creek*</td>
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<td>Grindstone Creek*</td>
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<td>Hardwick Creek</td>
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<td>Leslie</td>
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<td>Hines Creek*</td>
<td>Mouth to Hines Creek Road Crossing</td>
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<td>Honey Branch</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4</td>
<td>Leslie</td>
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<td>Hopper Cave* Branch</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.6</td>
<td>Jackson</td>
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<td>Indian Creek*</td>
<td>Backwater Kentucky River to Headwaters</td>
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<td>Carroll</td>
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<td>Indian Fork*</td>
<td>Mouth to Headwaters</td>
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<td>John Carpenter Fork*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5</td>
<td>Breathitt</td>
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<tr>
<td>Left Fork Big Double Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5</td>
<td>Clay</td>
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<tr>
<td>Line Fork*</td>
<td>Defeated Creek to Headwaters</td>
<td>11.8-27.5</td>
<td>Letcher</td>
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<td>Little Millseat Branch*</td>
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<td>Breathitt</td>
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<tr>
<td>Little Sixmile Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.2</td>
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<td>Lubbercord Creek</td>
<td>Mouth to Falls Branch</td>
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<td>Middle Fork of Kentucky River</td>
<td>Mouth to Upper Twin Creek</td>
<td>0.0-12.5</td>
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<td>Middle Fork of Kentucky River</td>
<td>Hyden, Kentucky to Greasy Creek</td>
<td>76.1-84.0</td>
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<td>Middle Fork of Red River</td>
<td>South Fork Red River to Natural Bridge State Park Lake</td>
<td>1.8-8.3</td>
<td>Powell</td>
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<td>Mill Creek*</td>
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<td>0.0-8.3</td>
<td>Owen</td>
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<td>Millseat Branch*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.9</td>
<td>Breathitt</td>
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<tr>
<td>Muddy Creek*</td>
<td>Elliston, Kentucky to Viney Creek</td>
<td>13.4-20.2</td>
<td>Madison</td>
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<td>Musseiman Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-8.4</td>
<td>Grant</td>
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<td>Red Bird River</td>
<td>Mouth to Big Creek</td>
<td>0.0-15.0</td>
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<td>Right Fork of Buffalo Creek*</td>
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<td>Roaring Fork*</td>
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<td>Sand Ripple Creek*</td>
<td>Mouth to Headwaters</td>
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<td>Severn Creek*</td>
<td>Mouth to North Fork Severn Creek</td>
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<td>Shelly Rock Fork*</td>
<td>Mouth to Headwaters</td>
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<tr>
<td>Sixmile Creek*</td>
<td>Little Sixmile to Dam</td>
<td>6.9-14.7</td>
<td>Henry</td>
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<tr>
<td>South Fork of Kentucky River</td>
<td>Mouth to Sexton Creek</td>
<td>0.0-27.7</td>
<td>Owosley</td>
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<tr>
<td>South Fork of Red River</td>
<td>Mouth to Sandlick Fork</td>
<td>0.0-3.9</td>
<td>Powell</td>
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<tr>
<td>South Fork of Station Camp Creek*</td>
<td>Mouth to Rock Lick Creek</td>
<td>0.0-9.6</td>
<td>Jackson</td>
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<td>Spruce Branch*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.1</td>
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<tr>
<td>Station Camp Creek*</td>
<td>Landuse Change to South Fork Station Camp Creek</td>
<td>19.0-22.3</td>
<td>Estill</td>
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<tr>
<td>Steer Fork*</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.9</td>
<td>Jackson</td>
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<tr>
<td>Sturgeon Creek*</td>
<td>Duck Fork to Little Sturgeon Creek</td>
<td>1.3-13.7</td>
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<tr>
<td>Sugar Creek*</td>
<td>Landuse Change to Headwaters</td>
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<td>Leslie</td>
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<tr>
<td>War Fork*</td>
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<tr>
<td>Wolpen Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.2</td>
<td>Menifee</td>
</tr>
</tbody>
</table>

**SALT RIVER BASIN**

| Brashears Creek | Guist Creek to Bullskin and Clear Creek | 13.0-25.5 | Shelby |
| Cedar Creek* | Mouth to Greens Branch | 0.0-6.1 | Bullitt |
| Chaplin River* | Thompson Creek to Corbin, KY | 40.1-53.7 | Washington |
| Guist Creek | Mouth to Jeptha Creek | 0.0-15.4 | Spencer |
| Harts Run* | Mouth to Headwaters | 0.0-2.3 | Bullitt |
| Otter Creek* | Landuse Change to East Fork and Middle Fork Otter Creek | 1.7-2.7 | Larue |
| Overall Creek* | Mouth to Headwaters | 0.0-1.3 | Bullitt |
| Salt Lick Creek* | Mouth to Headwaters | 0.0-8.4 | Marion |
| Sulphur Creek* | Mouth to Chese Lick and Brush Creek | 0.0-9.7 | Anderson |
| West Fork Otter Creek* | Mouth to Headwaters | 0.0-4.7 | Larue |
| Wilson Creek* | Mouth to Headwaters | 0.0-17.0 | Bullitt |

**GREEN RIVER BASIN**

<p>| Beavertail Creek* | Mouth to Headwaters | 0.0-14.1 | Edmonson |
| Cane Run* | Nolin River Backwaters to Headwaters | 1.6-5 | Hart |
| Caney Fork* | Mouth to Headwaters | 0.0-6.6 | Barren |
| Clifty Creek | Barton Run to Western Kentucky Parkway | 7.3-17.2 | Grayson |
| Clifty Creek* | Little Clifty Creek to Sulphur Lick | 7.7-13.2 | Todd |
| East Fork Little Barren River* | Red Lick Creek to Flat Creek | 19.2-20.2 | Metcalfe |
| Ellis Fork* | Mouth to Headwaters | 0.0-3.2 | Adair |
| Falling Timber Creek* | Landuse Change to Headwaters | 7.15-5 | Metcalfe |
| Fiddlers Creek* | Mouth to Headwaters | 0.0-6.8 | Breckinridge |
| Forbes Creek* | Mouth to Unidentified Tributary | 0.0-3.9 | Christian |
| Gasper River* | Clear Fork to Wavigton Creek | 17.0-35.2 | Logan |
| Goose Creek* | Mouth to Little Goose Creek | 0.0-8.1 | Casey |
| Green River | Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek | 181.7-207.8 | Edmonson |
| Green River Unidentified Tributary* | Landuse Change to Headwaters | 0.8-3.2 | Adair |
| Halls Creek* | Unidentified Tributary to Headwaters | 9.6-12.1 | Ohio |
| Lick Creek* | Mouth to Headwaters | 0.0-9.9 | Simpson |
| Linders Creek* | Mouth to Sutzler Creek | 0.0-7.7 | Hardin |
| Little Beavertail Creek | Mouth to SR 743 | 0.0-11.3 | Warren |
| Little Short Creek* | Mouth to Headwaters | 0.0-3.0 | Grayson |
| Lynn Camp Creek* | Mouth to Lindy Creek | 0.0-9.3 | Hard |
| McFarland Creek* | Grays Branch to Unidentified Tributary | 1.4-4.8 | Christian |
| Meeting Creek* | Little Meeting Creek to Petty Branch | 5.2-13.8 | Hardin |
| Muddy Creek* | Landuse Change to Headwaters | 13.0-15.5 | Ohio |
| North Fork Rough River* | Buffalo Creek to Reservoir Dam | 23.44-28.1 | Breckinridge |
| Peter Creek* | Caney Fork to Dry Fork | 11.6-18.5 | Barren |
| Pond Run* | Landuse Change to Headwaters | 1.4-6.8 | Breckinridge/Ohio |
| Rough River* | Linders Creek to Vertrees Creek | 136.9-147.8 | Hardin |
| Russell Creek* | Mouth to Columbia WWTP | 0.0-4.0 | Adair |
| Russell Creek* | Reynolds Creek to Headwaters | 55.9-68.2 | Adair |
| Sixes Creek* | Wild Branch to Headwaters | 2.0-7.5 | Ohio |
| Sulphur Branch* | Mouth to Headwaters | 0.0-2.0 | Edmonson |
| Trammel Fork* | Mouth to Tennessee Stateline | 0.0-30.15 | Allen |</p>
<table>
<thead>
<tr>
<th>River Name</th>
<th>Location</th>
<th>Longitude</th>
<th>Latitude</th>
<th>County</th>
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<tr>
<td>West Fork Pond River*</td>
<td>Unidentified Tributary to East Branch Pond River</td>
<td>12.7-22.5</td>
<td>Christian</td>
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<tr>
<td>White Oak Creek Unidentified Tributary*</td>
<td>Hovious Rd Crossing to SR 76</td>
<td>0.4-3.0</td>
<td>Adair</td>
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<tr>
<td>Crooked Creek*</td>
<td>Lake Barkley Backwaters to Headwaters</td>
<td>4.0-9.4</td>
<td>Trigg</td>
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<td>Donaldson Creek*</td>
<td>Craig Branch to Unidentified Tributary</td>
<td>6.9-10.3</td>
<td>Trigg</td>
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<tr>
<td>Elk Creek*</td>
<td>Tennessee Slateine to Dry Branch</td>
<td>7.5-9.8</td>
<td>Logan</td>
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<tr>
<td>Sugar Creek*</td>
<td>Lick Creek to Unidentified Tributary</td>
<td>2.1-6.7</td>
<td>Livingston</td>
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<td>Murphy's Pond</td>
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<td>Bad Branch*</td>
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<td>Bark Camp Creek*</td>
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<td>Beaver Creek*</td>
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**MISSISSIPPI RIVER BASIN**
(Main Stem and Minor Tributaries)
<table>
<thead>
<tr>
<th>Creek/Stream Name</th>
<th>Location</th>
<th>Length (miles)</th>
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<td>Brush Creek</td>
<td>Wolf Creek to Reemergence of Sinking Creek</td>
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<td>Howards Creek*</td>
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<td>Indian Creek*</td>
<td>Laurel fork to Barren Fork</td>
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<td>Jackie Branch*</td>
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</tbody>
</table>

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:
1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;
2. Surface water is designated as an outstanding state resource water that does not support a federally threatened or endangered aquatic species;
3. Surface water contains either of the following:
   a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in "Development and Application
   of the Kentucky Index of Biotic Integrity (KIBI)", 2003 incorporated by reference in Section 3 of this administrative regulation; or
   b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index", 2003 incorporated by reference in Section 3 of this administrative regulation; or
4. Surface water in the cabinet's reference reach network.
(b) Implementation procedure.
1. Dischargers listed in causes a through e of this subparagraph are subject to control by existing cabinet programs including
the Kentucky Pollution Discharge Elimination System program. Subparagraphs 2 through 9 of this paragraph shall not apply to those dischargers identified in clauses a through e of this paragraph, but the cabinet shall assure water quality necessary to fully protect existing uses.

a. Storm water discharge;
b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act and 33 U.S.C. 1344;
c. Domestic sewage discharge from a single-family residence;
d. Concentrated animal feeding operations; and

3. A KPDES permit for a new discharger or expanded discharge into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. A chronic whole effluent toxicity limitation shall apply unless an acute whole effluent toxicity limitation is more stringent; and
b. Chloride limitations shall be based on the domestic water supply criterion of 250 mg/l.

4. A KPDES permit for a new domestic sewage discharger or expanded domestic sewage discharge into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. No greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;
b. No greater than two (2) mg/l ammonia-nitrogen;
c. No greater than 0.010 mg/l total residual chlorine;
d. No greater than ten (10) mg/l total suspended solids;

5. Except as provided in subsection (7) of this section, a KPDES permit for a new non-domestic discharger or an expanded non-domestic discharge into exceptional water shall be restricted to no more than one-half (1/2) of the water quality based limitations that would have been permitted at standard design conditions.

6. If the permit applicant does not accept the effluent limitations required by this paragraph, the KPDES permit shall be issued with these effluent limitations and additional requirements of the Kentucky Pollution Discharge Elimination System program without further antidegradation review.

7. If the permit applicant does not accept the effluent limitations required by this paragraph, the applicant shall demonstrate to the satisfaction of the cabinet that no technologically and/or economically feasible alternatives exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located. For purposes of this administrative regulation, the approval of a POTWs regional facility plan pursuant to 401 KRS 5.008 shall demonstrate compliance with the alternatives analysis and socioeconomic demonstration for a regional facility. (An alternative treatment shall be deemed economically feasible, if the capital and operating cost does not exceed one-half (1/2) percent of the capital and operating cost of the discharge proposal.) The alternatives analysis and socioeconomic demonstration shall follow the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook," EPA, March 1995 incorporated by reference in subsection 3 of this administrative regulation. The alternatives analysis shall consider the following:

a. Discharge to other treatment facilities;
b. Use of other discharge locations;
c. Water reuse or recycle;
d. Process and treatment alternatives;
e. On-site or subsurface disposal; and
f. Any other examination of alternatives to lowering water quality deemed appropriate by the cabinet or the applicant.

8. A permit applicant who has failed to demonstrate to the satisfaction of the cabinet the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System program.

9. A permit applicant who demonstrates to the satisfaction of the cabinet the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 5.031.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section, (a) surface water shall be categorized as a high quality water if the surface water does not support all applicable designated uses and if the surface water is not listed in Table 1 or 2 of this section as an outstanding national resource water or an exceptional water.

(b) Implementation procedure.

1. Dischargers listed in clauses a through e of this subparagraph are subject to control by existing cabinet programs including the Kentucky Pollution Discharge Elimination System program. Subparagraphs 2 through 6 of this paragraph shall not apply to those dischargers identified in clauses a through e of this paragraph, but the cabinet shall assure water quality necessary to fully protect existing uses. Facilities that discharge pollutants not found in Table 1 of Section 5 of 401 KAR 5.031 are subject to control by existing cabinet programs and must demonstrate to the satisfaction of the cabinet an alternatives analysis and socioeconomic demonstration pursuant to this paragraph.

a. Storm water discharge;
b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act and 33 U.S.C. 1344;
c. Domestic sewage discharge from a single-family residence;
d. Concentrated animal feeding operations; and

2. Except as provided in subsection (4) of this section, the pollutants of the entire effluent of a KPDES permit for discharge into high quality water shall be restricted to no more than one-half (1/2) of the water quality based limitations that would have been permitted under standard design conditions for pollutants listed in Table 1 of Section 5 of 401 KAR 5.031.

3. If the permit applicant accepts the effluent limitations required by this paragraph, the KPDES permit shall be issued with these effluent limitations and any additional requirements of the Kentucky Pollution Discharge Elimination System program without further antidegradation review.

4. If the permit applicant does not accept the effluent limitations required by this paragraph, the applicant may request water quality based limitations permitted at standard design conditions. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that no technologically and/or economically feasible alternatives exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located. (An alternative treatment shall be deemed economically feasible, if the capital and operating cost does not exceed one-half (1/2) percent of the capital and operating cost of the discharge proposal.) For purposes of this administrative regulation, the approval of a POTWs regional facility plan pursuant to 401 KAR 5.008 shall demonstrate compliance with the alternat-
tives analysis and socioeconomic demonstration for a regional facility. The alternatives analysis and socioeconomic demonstration shall consider the following:

(a) Discharge to other treatment facilities;
(b) Use of other discharge locations;
(c) Water re-use or recycle;
(d) Process and treatment alternatives;
(e) On-site or off-site disposal;
(f) Any other examination of alternatives to lowering water quality deemed appropriate by the cabinet or the applicant;
(g) The positive or beneficial effect of the facility on an existing environmental or public health problem;
(h) The increase or avoidance of a decrease in employment;
(i) The increase in production level;
(j) The increase in operational efficiency;
(k) Industrial or commercial benefit to the community; and
(l) Any other economic or social benefit to the community.

5. A permit applicant who has failed to demonstrate to the satisfaction of the cabinet the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System Program. A permit application shall not be approved or issued if such applicant fails to demonstrate to the satisfaction of the cabinet the necessity for lowering water quality.

6. A permit applicant who demonstrates to the satisfaction of the cabinet the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 5:031.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting any applicable designated uses. A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding resource water in 401 KAR 5:025.

(b) Implementation procedure. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water. The process to allow a discharge into an impaired water and to assure protection of the water is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program. The following procedures shall govern implementation of the impairment policy of 401-KAR-5:029, Section 4, for a point-source discharge.

(1) Categorization. Surface waters shall be placed into one (1) of three (3) categories:

(a) Outstanding national-resource waters:
   1. Surface water that meets, at a minimum, the requirements for an outstanding state-resource water classification found in 401 KAR 5:031 Section 5 and
   2. Surface water that demonstrates to be of national ecological or recreational significance.

(b) Exceptional waters:
   1. Surface water designated as a Kentucky Wild River, unless it is categorized as an outstanding national-resource water.
   2. Outstanding state-resource water that does not support a federally-threatened or endangered aquatic species;

(c) Surface water that fully supports all applicable designated uses and contains:
   1. A fish community that is rated "excellent" by the use of the index of Biotic Integrity included in "Methods for Assessing Biological Integrity of Surface Waters" incorporated by reference in Section 4 of this administration regulation;
   2. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky, incorporated by reference in Section 4 of this administration regulation; and
   3. Basic protection of the cabinet's reference reach network.

(d) Use-protected waters...Use-protected waters...Use-protected waters.

(2) Procedure for implementing the impairment policy in outstanding national-resource waters.

(a) Water quality shall be maintained and protected in outstanding national-resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(3) Procedure for implementing the antidegradation policy in exceptional waters.

(a) A KPDES permit for an unpermitted or expanded discharge shall contain effluent limitations for the entire effluent that are as follows:

1. Domestic discharges shall have an effluent quality of:
   a. No greater than ten (10) mg/l five (5) day biochemical oxygen demand;
   b. No greater than two (2) mg/l ammonia-nitrogen;
   c. No greater than 0.010 mg/l total residual chlorine;
   d. No greater than ten (10) mg/l total suspended solids;
   e. No greater than one (1) mg/l total phosphorus;
   f. A minimum seven (7) mg/l dissolved oxygen;

2. A chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent.

3. A geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days; and

4. The discharge shall not cause the average in-stream dissolved oxygen concentration to be less than six (6) and zero-tenths (0.5) mg/l.

2. Chloride limits shall be based on the domestic water-supply criteria of 250 mg/l.

3. Stormwater discharges shall be exempt from antidegradation implementation procedures for exceptional waters, but shall be subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. Waste discharges that cre non-domestic waste or stormwater discharges shall be restricted to no more than one-half (1/2) of the loadings permitted for use protected waters at standard design conditions.

6. KPDES permit renewal that result in less than a twenty (20) percent increase in pollutant loading are exempt from implementation procedures for exceptional waters and shall be regulated by the requirements in subsection (4)(a) and (b) of this administrative regulation.

(b) If the permit applicant determines that it can meet effluent limitations without the use of additional treatment or control measures, the cabinet shall evaluate the applicant's proposal and determine whether the effluent limitations are met.

2. Use-protected waters...Use-protected waters...Use-protected waters.

(c) Zones of initial dilution are prohibited in exceptional waters unless assigned before the effective date of this administrative regulation.

3. Procedure for implementing the antidegradation policy in use protected waters for point-source discharges. All surface waters not listed in Section 3 of this administrative regulation are outstanding national-resource waters or exceptional waters. Such waters shall be categorized as use protected waters.

(a) All existing uses shall be protected and the level of water quality necessary to protect the uses shall be assured in use protected water.
(b) The process to allow a discharge to a use protected water and to assure the water's protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(5) The antidegradation procedures shall not preclude the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for dischargers located within that local government's jurisdiction to surface waters of the Commonwealth.

Section 2. Procedure for Recategorizing Water [waters]. This section shall apply to the recategorization of surface water [waters] to outstanding national resource water [waters] and exceptional water [waters]. The redesignation of water [waters] to outstanding state resource water [waters] shall be governed by the procedures in 401 KAR 5:025:

(1) The cabinet may propose to recategorize certain water [waters] to outstanding national resource water [waters] and exceptional water [waters].

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall determine the classification of the recategorization as a result of a petition and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized water [waters] promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water [waters] shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water [waters] for which the recategorization is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water [waters] for which the recategorization is proposed;

4. The existing and designated uses of the water [waters] upstream and downstream of the proposed recategorized water [waters];

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the Q10 and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water [waters] under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water [waters] qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water [waters] shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing the surface water [waters] to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and specific land uses adjacent to the surface water [waters] for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water, and the Q10 and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 125(a)(3) (C)(ii) of this administrative regulation are utilized.

Section 3. Surface-Water Categories. Surface waters categorized for antidegradation purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.
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<tr>
<th>VOLUME 30, NUMBER 7 – JANUARY 1, 2004</th>
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<thead>
<tr>
<th>River Name</th>
<th>Source to</th>
<th>Mission</th>
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<tbody>
<tr>
<td>East Fork of Indian Creek</td>
<td>Source to West Fork of Indian Creek</td>
<td>Menifee</td>
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<tr>
<td>Elisha Creek</td>
<td>Source to River Mile 0.95</td>
<td>Leslie</td>
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<tr>
<td>Glade Creek</td>
<td>Source to Red River</td>
<td>Menifee</td>
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<tr>
<td>Goose Creek</td>
<td>Laurel Creek to Red Bird River</td>
<td>Clay</td>
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<tr>
<td>Hardwick Creek</td>
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<td>Powell</td>
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<tr>
<td>Indian Creek</td>
<td>River Mile 4.7 to River Mile 0.56</td>
<td>Carroll</td>
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<td>River Mile 27.5 to River Mile 17.3</td>
<td>Letcher</td>
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<td>Lulbegrud Creek</td>
<td>Falls Branch to Red River</td>
<td>Clark/Powell</td>
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<tr>
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<td>Upper Twin Creek to North Fork of Kentucky River</td>
<td>Lee</td>
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<tr>
<td>Middle Fork of Kentucky River</td>
<td>Greasy Creek to Buckhorn Reservoir backwaters</td>
<td>Leslie</td>
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<tr>
<td>Musselman Creek</td>
<td>River Mile 8.4 to River Mile 2.6</td>
<td>Grant</td>
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<td>Red Bird River</td>
<td>Big Creek to Goose Creek</td>
<td>Clay</td>
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<tr>
<td>Right Fork of Buffalo Creek</td>
<td>Source to Buffalo Creek</td>
<td>Owsley</td>
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<tr>
<td>South Fork of Kentucky River</td>
<td>Sexton Creek to River Mile 11.3</td>
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<tr>
<td>South Fork of Red River</td>
<td>Sand Lick Fork to Middle Fork of Red River</td>
<td>Powell</td>
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<tr>
<td>South Fork of Staton-Camp Creek</td>
<td>Source to River Mile 5.3</td>
<td>Jackson</td>
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<td>Staton Camp Creek</td>
<td>River Mile 22.3 to River Mile 19.0</td>
<td>Estill</td>
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<tr>
<td>Sturgeon Creek</td>
<td>Source to River Mile 4.0</td>
<td>Lee</td>
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<tr>
<td>Sugar Creek</td>
<td>Source to River Mile 0.8</td>
<td>Leslie</td>
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<tr>
<td>Wolfpen Creek</td>
<td>Source to Red River</td>
<td>Menifee</td>
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<th>TRADEWATER RIVER BASIN</th>
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<td>Tradewater River</td>
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<tr>
<td>Yellowbank Creek</td>
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<th>LAKES AND RESERVOIRS</th>
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<td>Metropolis</td>
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<td>Swan</td>
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<tr>
<td>MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)</td>
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<th>UPPER CUMBERLAND RIVER BASIN</th>
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<tr>
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<td>Buck Creek</td>
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<td>Cane Creek</td>
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<td>Cumberland River</td>
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<td>Eagle Creek</td>
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<td>Horse Lick Creek</td>
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<tr>
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<td>Marsh Creek</td>
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<td>Martins Fork of Cumberland River</td>
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<td>Goose Creek</td>
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<td>Green River</td>
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<td>Otter Creek</td>
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<td>Peter Creek</td>
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<td>Trammel Fork</td>
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<tr>
<td>Panther Creek</td>
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<td>Soldier Creek</td>
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Section 4-1] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet.
(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet and "Methods of Assessing Biological Integrity of Surface Water", October 1993, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet.
(c) "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky", June 1988, Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LIST, Secretary
APPROVED BY AGENCY, December 3, 2003
FILED WITH LRC: December 4, 2003 at 9 a.m.
CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, fax (502) 564-0111.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of amended 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation provides a methodology to implement the antidegradation policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

(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 implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises surface water categories to include the new categories of high quality water and impaired water. This amendment reorganizes much of the Section 1 text. This amendment also includes 146 surface waters newly categorized as exceptional water that are reorganized into a new table and include the waterway segments for each water. Outstanding state resource water that is not otherwise categorized as outstanding national resource water or exceptional water is defaulted into the high quality water category. Two new documents are incorporated by reference and two documents previously incorporated by reference have been removed from this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address outstanding U.S. EPA disapproval. The U.S. EPA disapproved this regulation after promulgation on August 7, 1997 and did not act on the disapproved provision on August 20, 2000. At 67 Fed. Reg. 58971 (November 14, 2002), U.S. EPA proposed a substitute rule that is substantially the same as 401 KAR 5:029(1). The proposal, if enacted, will leave Kentucky without implementation procedures for its antidegradation program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes a methodology to implement the antidegradation policy contained in 401 KAR 5:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing a revised scheme of antidegradation categories and listing this 146 surface waters newly categorized as exceptional water. This is a crucial reference tool to establish the categories of the newly assigned exceptional waters and is supportive to achieving compliance with this administrative regulation.

(3) List the type and number of individual, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Commonwealth and all surface waters newly categorized as exceptional waters and by default categorizes many surface waters as high quality. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional water or high quality water could be affected by either stricter discharge limitations or an alternative analysis and socioeconomic demonstration. Storm water discharges are not subject to antidegradation.

The cabinet concluded that exceptional and high quality water receiving discharges related solely to storm water are protected under existing cabinet programs. This is consistent with the existing requirements of this administrative regulation. Storm water discharges are considered to be short-term impacts and the vast majority do not receive numerical permit limits; however, they must comply with the best management practices and be operated by the cabinet to ensure compliance. Coal mining discharge is not subject to additional antidegradation review in exceptional and high quality water; however, coal mining is subject to regulation under the Surface Mining Control and Reclamation Act and 404 Dredge and Fill permits issued by the U.S. Army Corps of Engineers, which include 401 Water Quality Certifications issued by this cabinet. The operations covered by the cabinet's Section 402 (KPDES) program are intermittent in nature. Discharges from coal mining operations fall into two categories. Section 402 (KPDES) permits are required for all surface water discharges from sediment control structures required by the U.S. Surface Mining Control and Reclamation Act and associated administrative regulations. The KPDES permit process can only address the quality of discharges from permitted sediment ponds, not the methods of coal mining that are used or the location of the pond itself. Discharge limits are technology-based and are set by U.S. EPA and the cabinet for the coal mining industry. The only alternative to current discharges would require that larger ponds be constructed to increase the treatment of coal mining runoff. This would result in increased stream impacts and the cabinet questions the environmental benefit of this action. Kentucky Department for Surface Mining and Reclamation and the cabinet administer a "Lands Unsuitable" determination process that can result in an area being deemed off limits to coal mining. Activities associated with coal mining that result in a physical discharge of fill material into waters of the U.S. will require a permit from the U.S. Army Corps of Engineers under Section 404 of the CWA. The Corps has created a modified nationwide permit review process where each impact, such as a rock fill or sediment pond dam in a stream, undergoes an alternatives analysis, whereby other designs and locations are studied that would avoid and/or minimize impacts to waters of the U.S. Unavoidable impacts will then require compensatory mitigation to replace the lost aquatic stream functions using the Corps' Eastern Kentucky Stream Functional Assessment Protocol. Fills in waters of the U.S. that are designated as outstanding state resource waters and cold water aquatic habitats will receive additional review by the cabinet under the Section 401 Water Quality Certification process. This review complements the Corps' 404 evaluation and is intended to insure that these waters and their aquatic resources are protected. No fills are permitted in streams designated as outstanding state resource water (OSRW). Because of these reasons, Illinois, Ohio, and Wyoming pre-discharge activities from antidegradation review and this approach has been approved by U.S. EPA. As to the socioeconomic importance of coal mining in Kentucky, the latest annual data available show that 133.8 million short-tons of coal were mined in 2001, twelve percent of the total U.S. production. Coal mining employs around 15 thou-

-1811-
sand employees around the state and generates coal severance
tax of 140 million dollars in general fund revenue. For every dollar
paid in coal severance taxes, additional monies are generated for
the general fund because of revenue directly associated to coal
companies through payment of various taxes. Given these evalua-
tions, the cabinet has concluded that additional antidegradation
analyses is not required for exceptional and high quality water.
Domestic sewage discharge from a single-family residence is also
not subject to additional antidegradation review in exceptional and
high quality water if the cabinet deems that no feasible alternatives
exist. The cabinet considers alternatives analysis for domestic
sewage dischargers. Alternatives to domestic sewage discharges
from single-family residences are evaluated by the discharger and
the cabinet prior issuance of a KPDES permit. Applicants must
check with local health departments to determine if on-site systems
are feasible, and the cabinet investigates connection to a larger
system, spray irrigation, etc., prior to approval of a home discharge
treatment unit. Concentrated Animal Feeding Operations must
already comply with a no discharge to waters of the Common-
wealth permit; therefore, the cabinet concluded that Concentrated
Animal Feeding Operations located next to exceptional and high
quality water that are protected under existing cabinet programs
need not be subjected to additional antidegradation analysis. Op-
érations that expand by less than twenty percent over currently
permitted pollutant loadings are not subject to further antidegra-
dation analysis. This is consistent with the existing requirements of
this administrative regulation. The cabinet shall assure water qual-
ity necessary to fully protect existing uses. The cabinet concluded
that a POTW's approval of a regional facility plan pursuant to KAR
5:006 (201 Planning Document) will demonstrate compliance with
the alternatives analysis and socioeconomic demonstration.

(4) Provide an assessment of how the above group of groupings
will be impacted by either the implementation of this administrative
regulation, if new, or by the change, if it is an amendment. The
permits and regulations imposed by this administrative regula-
tion on new or expanded point source dischargers into water bodies could result in additional treatment out-
lays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution preven-
tion and socioeconomic analyses. Direct and indirect savings will
be realized through reduced drinking water treatment costs, main-
tenance of good agricultural water, maintenance of fisheries, and
healthy recreational waters. This requirement already exists in
state and federal law. The amended administrative regulation does
not create additional obligations for dischargers. This amended
administrative regulation sets forth specific implementation proce-
dures to comply with already existing antidegradation require-
ments.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: Given current budgetary limitations, additional
workload will be absorbed within existing levels of funding and
staffing.
(b) On a continuing basis: The cabinet, in implementing the
requirements of this amended administrative regulation, will inter-
nalize most associated costs with normal budget appropriations.
Socioeconomic demonstrations will be reviewed and determina-
tions made as to their adequacy. Costs may increase if the divi-
sion's findings are contested.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
source of revenue will be the General Fund and federal funds, as
appropriated by the Kentucky 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: Fees or fund-
ing increases are not anticipated to be necessary to the imple-
mentation of this amendment.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees nor directly or
indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is used in this
administrative regulation. Storm water discharges are not subject
to antidegradation analysis. The cabinet concluded that excep-
tional and high quality water receiving discharges related solely to
storm water are protected under existing cabinet programs. This is
consistent with the existing requirements of this administrative
regulation. Coal mining discharge is not subject to additional an-
tidegradation review in exceptional and high quality water; how-
ever, coal mining is subject to regulation under the Surface Mining
Control and Reclamation Act and 404 Dredge and Fill permits is-
issued by the U.S. Army Corps of Engineers, which include 401
Water Quality Certifications issued by this cabinet. The 404 permits
require the investigation of alternatives and the selection of tech-
nologically and economically feasible alternatives with the least
environmental impact and socioeconomic demonstrations for coal
mining activities. Given these evaluations, the cabinet has con-
cluded that additional antidegradation analysis is not necessary for
exceptional and high quality water. Domestic sewage discharge
from a single-family residence is also not subject to additional an-
tidegradation review in exceptional and high quality water if the
 cabinet deems that no feasible alternatives exist. The cabinet con-
siders alternatives analysis for domestic sewage dischargers. Con-
centrated Animal Feeding Operations must already comply with a
no discharge to waters of the Commonwealth permit; therefore, the
cabinet concluded that Concentrated Animal Feeding Operations
located next to exceptional and high quality water are protected
under existing cabinet programs and need not be subjected to
additional antidegradation analysis. Operations that expand by less
than twenty percent over currently permitted pollutant loadings are
not subject to further antidegradation analysis. This is consistent
with the existing requirements of this administrative regulation.
The cabinet shall assure water quality necessary to fully protect
existing uses. The cabinet concluded that a POTW's approval of a
regional facility plan pursuant to KAR 5:006 (201 Planning Docu-
ment) will demonstrate compliance with the alternatives analysis and
socioeconomic demonstration.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal man-
date. There is no federal statute or regulation mandating that Ken-
tucky implement a water pollution control program. For Kentucky
to maintain its delegation over the NPDES permit program, the Clean
Water Act requires that Kentucky review its water quality standards
every three years and comply with the programmatic requirements of
40 C.F.R. Part 131, including the requirement for implementing
an antidegradation policy. The federal regulations require the
adoption of an antidegradation policy for delegated states. The
U.S. Environmental Protection Agency does provide guidance to
the states, but individual decisions concerning the states water qual-
ity programs are left to the states.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029,
5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal
mandate. The Clean Water Act requires designated uses, criteria,
standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter require-
ments, or additional or different responsibilities or requirements
than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or
additional or different responsibilities or requirements. There is no
stricter standard or additional or different responsibilities or re-
quirements.

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. This amended administrative
regulation may affect the wastewater treatment divisions of local
government if they will have new or expanded discharges into
outstanding national resource waters, exceptional waters, or high
quality waters.

3. State, in detail, the aspect or service of local government to
which this administrative regulation relates, and excluding 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 amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate 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 (+/-): Cannot be determined.
Expenditures (+/-): Cannot be determined.
Other Explanations: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. The permit limitations imposed on new or expanded point source discharges into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. This requirement already exists in state and federal law. The amended administrative regulation does not create additional obligations for dischargers. This amended administrative regulation sets forth specific implementation procedures to comply with already existing antidegradation requirements. This administrative regulation allows regional publicly-owned treatment works to use their Regional Facility Plan (201 Planning Document) as an exception to compliance with the socioeconomic demonstration and alternatives analysis.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:031. Surface water standards.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.535, 146.550 to 146.570, 146.600 to 146.619, 146.990, 224.01-010 [224.01-100], 224.01-400, 224.16-050, 224.16-070, 224.70-100 to 224.70-140, 224.71-150 to 224.71-155, 224.73-100 to 224.73-120, 224.73-120 to 224.73-140, 224.74-43 to 224.74-45, 224.80, 224.90, 224.70, 224.71, 224.73-73

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271 et seq., 1531 et seq., 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with federal and state laws.

Section 1. Nutrient Limits. In lakes and reservoirs and their tributaries, and other surface waters where eutrophication prob-
lems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:

1. The scope of the problem;
2. The geography of the affected area; and
3. Relative contributions from existing and proposed sources.

Section 2. Minimum Criteria Applicable to All Surface Waters. The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029. Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:
(a) Settle to form objectionable deposits;
(b) Float as debris, scum, oil, or other matter to form a nuisance;
(c) Produce objectionable color, odor, taste, or turbidity;
(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;
(e) Produce undesirable aquatic life or result in the dominance of nuisance species;
(f) Cause fish flesh tainting. The concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) μg/l as an instream value;
(g) Cause the following changes in radionuclides:

1. The gross total alpha particle activity, including radium-226 but excluding radon and uranium, to exceed fifteen (15) pCi/l;
2. Combined radium-226 and radium-228 to exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l.
3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;
4. The concentration of tritium to exceed 20,000 pCi/l;
5. The concentration of total Strontium-90 to exceed eight (8) pCi/l;
6. The concentration of uranium to exceed thirty (30) μg/l.
(2) The water quality [following] criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use. The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x 10⁶ shall be utilized to establish the allowable concentration.

<p>| Table 1. Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue |
|-----------------|-----------------|
| Substances Not Linked to Cancer | Concentration (μg/l) |
| Metals* | |
| Antimony | 4,300 |
| Mercury | 0.061 |
| Nickel | 4,690 |
| Thallium | 6.3 |
| Zinc | 69,000 |
| Organics | |
| Aacenaphene | 2,700 |
| Acrolein | 780 |
| Anthracene | 110,000 |
| Chlorobenzene | 21,000 |
| 1,2,4,5-tetrachlorobenzene | 2.9 |
| Pentachlorobenzene | 4.1 |
| bis(2-chloroisopropyl) ether | 170,000 |
| Cyanide | 220,000 |
| 1,2-dichlorobenzene | 17,000 |
| 1,3-dichlorobenzene | 2,600 |
| 1,4-dichlorobenzene | 2,600 |
| 1,3-dichloropropane | 1,700 |
| 1,2,4-trichlorobenzene | 940 |</p>
<table>
<thead>
<tr>
<th>Substance</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>alfa-Endosulfan</td>
<td>240</td>
</tr>
<tr>
<td>beta-Endosulfan</td>
<td>240</td>
</tr>
<tr>
<td>Endosulfan-sulfate</td>
<td>240</td>
</tr>
<tr>
<td>Endrin</td>
<td>0.81</td>
</tr>
<tr>
<td>Endrin aldehyde</td>
<td>0.81</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>29,000</td>
</tr>
<tr>
<td>Fluoranthene</td>
<td>370</td>
</tr>
<tr>
<td>Fluorene</td>
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<tr>
<td>Hexachlorocyclopentadiene</td>
<td>17,000</td>
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<td>2-chlorophenane</td>
<td>4,300</td>
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<td>2-chlorophenol</td>
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<td>2,4-dichlorophenol</td>
<td>780</td>
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<td>2,4,5-trichlorophenol</td>
<td>9,800</td>
</tr>
<tr>
<td>2,4-dimethyloxyphenol</td>
<td>2,300</td>
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<tr>
<td>2,4-dinitro-o-tolol, or 2-methyl-4,6-dinitrophenol</td>
<td>765</td>
</tr>
<tr>
<td>Butylbenzyl-phthalate</td>
<td>5,200</td>
</tr>
<tr>
<td>2,4-dinitrophenol</td>
<td>14,000</td>
</tr>
<tr>
<td>Phenol</td>
<td>4,600,000</td>
</tr>
<tr>
<td>Di-n-butyolphthalate</td>
<td>12,000</td>
</tr>
<tr>
<td>Diethyl-phthalate</td>
<td>12,000</td>
</tr>
<tr>
<td>Dimethyl-phthalate</td>
<td>2,900,000</td>
</tr>
<tr>
<td>1,3,4-dichlorobenzene</td>
<td>1,700</td>
</tr>
<tr>
<td>Pyrene</td>
<td>11,000</td>
</tr>
<tr>
<td>Methyl bromide</td>
<td>4,000</td>
</tr>
<tr>
<td>Nitrobenzene</td>
<td>1,900</td>
</tr>
<tr>
<td>Toluene</td>
<td>290,000</td>
</tr>
</tbody>
</table>

**Substances Linked to Cancer**

<table>
<thead>
<tr>
<th>Organics</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acrylonitrile</td>
<td>0.65</td>
</tr>
<tr>
<td>Aldrin</td>
<td>0.00014</td>
</tr>
<tr>
<td>Benzene</td>
<td>71</td>
</tr>
<tr>
<td>Benzo[a]anthracene</td>
<td>0.049</td>
</tr>
<tr>
<td>Benzo(a)pyrene</td>
<td>0.049</td>
</tr>
<tr>
<td>Benzo(b)fluoranthene</td>
<td>0.049</td>
</tr>
<tr>
<td>Benzo(k)fluoranthene</td>
<td>0.049</td>
</tr>
<tr>
<td>Bromoform</td>
<td>360</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>4.4</td>
</tr>
<tr>
<td>Chlorodibromomethane</td>
<td>34</td>
</tr>
<tr>
<td>Dichlorobromomethane</td>
<td>46</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>0.00077</td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
<td>99</td>
</tr>
<tr>
<td>1,1,2-trichloroethane</td>
<td>41.8</td>
</tr>
<tr>
<td>1,1,2,2-tetrachloroethane</td>
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<tr>
<td>Hexachloroethane</td>
<td>8.9</td>
</tr>
<tr>
<td>1,2-dichloropropane</td>
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</tr>
<tr>
<td>2,4,5-trichlorophenol</td>
<td>6.6</td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>8.2</td>
</tr>
<tr>
<td>bis-(2-chloroethyl)-ether</td>
<td>1.40</td>
</tr>
<tr>
<td>bis-(2-ethylhexyl)-phthalate</td>
<td>5.9</td>
</tr>
<tr>
<td>Chloroform</td>
<td>470</td>
</tr>
<tr>
<td>Chrysene</td>
<td>0.049</td>
</tr>
<tr>
<td>4,4'-DDE</td>
<td>0.00069</td>
</tr>
<tr>
<td>4,4'-DDD</td>
<td>0.00084</td>
</tr>
<tr>
<td>4,4'-DDT</td>
<td>0.00069</td>
</tr>
<tr>
<td>Dibenzo(a,h)anthracene</td>
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</tr>
<tr>
<td>3,3'-dichlorobenzidine</td>
<td>0.077</td>
</tr>
<tr>
<td>1,1-dichloroethylene</td>
<td>3.2</td>
</tr>
<tr>
<td>1,2-trans-dichloroethylene</td>
<td>140,000</td>
</tr>
<tr>
<td>Dieldrin</td>
<td>0.00014</td>
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<tr>
<td>2,4-dinitroliene</td>
<td>9.1</td>
</tr>
<tr>
<td>Dioxin, 2,3,7,8-TCDD</td>
<td>0.000000014</td>
</tr>
<tr>
<td>1,2-diphenylhexazine</td>
<td>0.54</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>0.00021</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>0.00011</td>
</tr>
<tr>
<td>Hexachlorobutadiene</td>
<td>50.0</td>
</tr>
<tr>
<td>alpha-Hexachlorocyclohexane-or-BHC</td>
<td>0.013</td>
</tr>
<tr>
<td>beta-BHC</td>
<td>0.046</td>
</tr>
<tr>
<td>gamma-BHC or-lindane</td>
<td>0.063</td>
</tr>
<tr>
<td>Indeno(1,2,3-cd)pyrene</td>
<td>0.049</td>
</tr>
<tr>
<td>Isophorone</td>
<td>2,600</td>
</tr>
<tr>
<td>Methylene chloride</td>
<td>1,600</td>
</tr>
<tr>
<td>N-nitroso-1-naphthylamine</td>
<td>8.1</td>
</tr>
<tr>
<td>N-nitrosodi-2-propylamine</td>
<td>1.4</td>
</tr>
<tr>
<td>N-nitrosodi-2-propylamine</td>
<td>16.0</td>
</tr>
<tr>
<td>Polychlorinated Biphenyls or-PCBs</td>
<td>0.000079</td>
</tr>
<tr>
<td>Tetrachloroethene</td>
<td>8.65</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>0.00075</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>81</td>
</tr>
<tr>
<td>Vinyl Chloride</td>
<td>526</td>
</tr>
</tbody>
</table>

[Total recoverable form measured in an unfiltered sample]

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legiti-
mate uses and associated criteria protective of those uses. Those uses are listed in 401 KAR 5:029. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 [5, 6, 7] of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and
(b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to in-stream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if [when] deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be 7Q10;
(b) Water-based recreation protection shall be 7Q10;
(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and
2. 7Q10 for noncancer-linked substances;
(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean, and [only] shall be:

1. The harmonic mean for cancer-linked substances; and
2. 7Q10 for noncancer-linked substances; and
(e) Protection of aesthetics [and for changes in radionuclides] shall be 7Q10.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreal growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO3 shall not be reduced by more than twenty-five (25) percent. If natural alkalinity is below twenty (20) mg/l CaCO3, there shall not be a reduction below the natural level. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota.
which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. Values in the following table are guidelines for surface water temperature. [As a guideline, the water temperature for all surface waters shall comply with the limitations shown in the following tables.]

<table>
<thead>
<tr>
<th>Month/Date</th>
<th>Period Average (°F)</th>
<th>Instantaneous Maximum (°F)</th>
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<tr>
<td>January 1-31</td>
<td>45</td>
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<td>February 1-29</td>
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<td>50</td>
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<td>March 1-15</td>
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<td>56</td>
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<tr>
<td>March 16-31</td>
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<tr>
<td>April 1-15</td>
<td>58</td>
<td>64</td>
</tr>
<tr>
<td>April 16-30</td>
<td>64</td>
<td>69</td>
</tr>
<tr>
<td>May 1-15</td>
<td>68</td>
<td>73</td>
</tr>
<tr>
<td>May 16-31</td>
<td>75</td>
<td>80</td>
</tr>
<tr>
<td>June 1-15</td>
<td>80</td>
<td>85</td>
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<tr>
<td>June 16-30</td>
<td>83</td>
<td>87</td>
</tr>
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<td>July 1-31</td>
<td>84</td>
<td>89</td>
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<tr>
<td>August 1-31</td>
<td>84</td>
<td>89</td>
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<tr>
<td>September 1-15</td>
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<td>87</td>
</tr>
<tr>
<td>September 16-30</td>
<td>82</td>
<td>86</td>
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<tr>
<td>October 1-15</td>
<td>77</td>
<td>82</td>
</tr>
<tr>
<td>October 16-31</td>
<td>72</td>
<td>77</td>
</tr>
<tr>
<td>November 1-30</td>
<td>67</td>
<td>72</td>
</tr>
<tr>
<td>December 1-31</td>
<td>62</td>
<td>67</td>
</tr>
</tbody>
</table>

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five and zero tenths (5.0) mg/l daily average; the instantaneous minimum shall not be less than four and zero tenths (4.0) mg/l.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(i) (Solid)

1. The dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected.

(g) (2) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

(h) (3) Settliable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities is prohibited.

(i) (9) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time downstream from mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

\[ Y = 1.2 \times (\text{Total ammonia-N})/(1 + 10^{2.399(pH)}) \]

\[ pK_a = 0.0902 + (2730/273.2 + T_d) \]

Where:

- \( T_d \) = temperature, degrees Celsius.
- \( Y \) = un-ionized ammonia (mg/l).

1. (i) (7) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC96) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the LC10.

In the absence of acute criteria for pollutants [substances] listed in Table 1 of Section 6 of this administrative regulation [Table 2] or for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents which are acutely toxic, the allowable instream concentration shall not exceed the LC10 or one-third (1/3) LC96 concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat [substances] are listed in Table 1 of Section 6 of this administrative regulation (2). These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded.

1. Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) mg/l or a chronic criteria value of eleven (11) mg/l.

<table>
<thead>
<tr>
<th>Substance</th>
<th>Acute Criteria</th>
<th>Chronic Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.010 mg/l</td>
<td>0.050 mg/l</td>
</tr>
<tr>
<td>Arsenic (III)</td>
<td>0.10 mg/l</td>
<td>0.050 mg/l</td>
</tr>
<tr>
<td>Cadmium (µg/l)</td>
<td>≤1.000</td>
<td>≤0.500</td>
</tr>
<tr>
<td>Chromium (III) (µg/l)</td>
<td>≤0.005</td>
<td>≤0.005</td>
</tr>
<tr>
<td>Chromium (VI)</td>
<td>≤0.100</td>
<td>≤0.100</td>
</tr>
<tr>
<td>Copper (µg/l)</td>
<td>≤0.005</td>
<td>≤0.005</td>
</tr>
<tr>
<td>Iron</td>
<td>≤0.10 mg/l</td>
<td>≤0.10 mg/l</td>
</tr>
<tr>
<td>Lead (µg/l)</td>
<td>≤0.100</td>
<td>≤0.100</td>
</tr>
<tr>
<td>Mercury</td>
<td>≤0.10 mg/l</td>
<td>≤0.10 mg/l</td>
</tr>
<tr>
<td>Nickel (µg/l)</td>
<td>≤0.300</td>
<td>≤0.300</td>
</tr>
<tr>
<td>Selenium</td>
<td>≤0.10 mg/l</td>
<td>≤0.10 mg/l</td>
</tr>
<tr>
<td>Silver (µg/l)</td>
<td>≤0.100</td>
<td>≤0.100</td>
</tr>
<tr>
<td>Zinc (µg/l)</td>
<td>≤0.100</td>
<td>≤0.100</td>
</tr>
</tbody>
</table>

| Organics | | |
|----------| | |
| Algin    | 3.0 mg/l | 0.0043 mg/l |
| Chlordan | 2.4 mg/l | 0.001 mg/l |
| Chloropurpurea | 0.083 mg/l | 0.0041 mg/l |
| 4,4'-DDE | 1.1 mg/l | 0.001 mg/l |
| Dieldrin | 0.24 mg/l | 0.056 mg/l |
| alpha-Endosulfan | 0.82 mg/l | 0.056 mg/l |
| beta-Endosulfan | 0.82 mg/l | 0.056 mg/l |
| Endrin   | 0.048 | 0.036 |
| Guthion  | 0.01 mg/l | 0.01 mg/l |
| Heptachlor | 0.02 mg/l | 0.0038 mg/l |
| Heptachlor epoxide | 0.02 mg/l | 0.0038 mg/l |
| Lindane or gamma BHC | 0.06 mg/l | 0.056 mg/l |
| Malathion | 0.1 mg/l | 0.001 mg/l |
| Mirex   | 0.001 mg/l | 0.001 mg/l |
| Methoxychlor | 0.030 mg/l | 0.001 mg/l |
| Parathion | 0.006 mg/l | 0.0013 mg/l |
| Pentachlorophenol (µg/l) | ≤0.005 | ≤0.005 |
| Phthalate esters | 3 mg/l | 3 mg/l |

- 1815 -
<table>
<thead>
<tr>
<th>Substances Not Linked to Cancer</th>
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1CAS = Chemical Abstracts Service.
2Water quality criteria in μg/L unless reported in different units.
3Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.
4DWS = Domestic Water Supply Source.
5Fish = Fish Consumption.
6The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L if aquatic life has not been shown to be adversely affected.
7Hard = Hardness as mg/L as CaCO₃.

Section 7, Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use: (a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a monthly geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not (per month); nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli [per month]. These limits shall be applicable during the recreation season of May 1 through October 31. Fecal coliform criteria listed in subsection (2) of this section shall apply during the remainder of the year. (b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours. (2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year: (a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples [per month]; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period [per month]. (b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8, [7.] Outstanding State Resource Waters. This designation category includes certain unique waters of the Commonwealth. (1) Water for inclusion. (a) Automatic inclusion. The following surface waters shall automatically be included in this category: 1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360; 2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq.; 3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and 4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq. (b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet: 1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local gov-
environment parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or fulfill two (2) of the following criteria:
   a. Support a diverse or unique native aquatic flora or fauna;
   b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or
   c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:
   (a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 5:026, shall be applicable to these waters.
   (b) If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.
   (c) Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 5:026.

(3) Determination of designation.
   (a) Any person may present a proposal to designate certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 3(3)(a) through (h).
   (b) The cabinet shall review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.
   (c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 5:026.

Section 9. [8] Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. These waters are subject to all applicable provisions of 401 KAR 5:002, 5:026, 5:029, 5:030, and this administrative regulation.

(1) Dissolved oxygen. Concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15-June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be maintained.

(2) Temperature.
   (a) Allowable stream temperatures are:

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<td>March 1-15</td>
<td>51</td>
<td>56</td>
</tr>
<tr>
<td>March 16-31</td>
<td>54</td>
<td>59</td>
</tr>
<tr>
<td>April 1-15</td>
<td>58</td>
<td>64</td>
</tr>
<tr>
<td>April 16-30</td>
<td>64</td>
<td>69</td>
</tr>
<tr>
<td>May 1-15</td>
<td>68</td>
<td>73</td>
</tr>
<tr>
<td>May 16-31</td>
<td>75</td>
<td>80</td>
</tr>
<tr>
<td>June 1-15</td>
<td>80</td>
<td>85</td>
</tr>
<tr>
<td>June 16-30</td>
<td>83</td>
<td>87</td>
</tr>
<tr>
<td>July 1-31</td>
<td>84</td>
<td>89</td>
</tr>
<tr>
<td>August 1-31</td>
<td>84</td>
<td>89</td>
</tr>
<tr>
<td>September 1-15</td>
<td>84</td>
<td>87</td>
</tr>
<tr>
<td>September 16-30</td>
<td>82</td>
<td>86</td>
</tr>
<tr>
<td>October 1-15</td>
<td>77</td>
<td>82</td>
</tr>
<tr>
<td>October 16-31</td>
<td>72</td>
<td>77</td>
</tr>
<tr>
<td>November 1-30</td>
<td>67</td>
<td>72</td>
</tr>
<tr>
<td>December 1-31</td>
<td>52</td>
<td>57</td>
</tr>
</tbody>
</table>

(b) A successful demonstration conducted for thermal discharge limitations under Section 316(a) of the Clean Water Act shall constitute compliance with these temperature criteria.

(3) Maximum allowable instream concentrations for specific pollutants [parameters] for the protection of human health are listed in Table 2 of subsection (4) of this section [given below]. They shall be met at the edge of the assigned mixing zone. [Metal-concentrations are total-recoverable values except hexavalent chromium, which is dissolved.]

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Concentration (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.05</td>
</tr>
<tr>
<td>Barium</td>
<td>2.0</td>
</tr>
<tr>
<td>Chloride</td>
<td>250</td>
</tr>
<tr>
<td>Fluoride</td>
<td>2.0</td>
</tr>
<tr>
<td>Nitrate + Nitrate-Nitrogen</td>
<td>10.0</td>
</tr>
<tr>
<td>Nitrite-Nitrogen</td>
<td>4.0</td>
</tr>
<tr>
<td>Phenolics</td>
<td>0.005</td>
</tr>
<tr>
<td>Sulfate</td>
<td>250</td>
</tr>
</tbody>
</table>

(4) To provide for the protection of warm water aquatic life habitats, the following criteria in Table 2 of this subsection shall be met at the edge of the assigned mixing zone.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Human Health Criteria in µg/L</th>
<th>Warm Water Aquatic Habitat Criteria in µg/L</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acute</td>
<td>Chronic</td>
</tr>
<tr>
<td>Arsenic</td>
<td>10.0</td>
<td>e(1.0166 ln [Hard*]) - 3.924</td>
</tr>
<tr>
<td>Barium</td>
<td>2,000</td>
<td>e(0.7408 ln [Hard*]) - 4.719</td>
</tr>
<tr>
<td>Cadmium</td>
<td></td>
<td>e(0.9422 ln [Hard*]) - 1.700</td>
</tr>
<tr>
<td>Chloride</td>
<td>250,000</td>
<td>e(0.8545 ln [Hard*]) - 1.702</td>
</tr>
<tr>
<td>Chromium, hexavalent</td>
<td>16</td>
<td>11</td>
</tr>
<tr>
<td>Copper</td>
<td>22</td>
<td>5.2</td>
</tr>
<tr>
<td>Cyanide, Free</td>
<td>2,000</td>
<td>e(1.273 ln [Hard*]) - 1.460</td>
</tr>
<tr>
<td>Fluoride</td>
<td></td>
<td>e(1.273 ln [Hard*]) - 4.705</td>
</tr>
<tr>
<td>Lead</td>
<td>1.7</td>
<td>0.91</td>
</tr>
<tr>
<td>Mercury</td>
<td></td>
<td>e(0.8450 ln [Hard*]) + 2.255</td>
</tr>
<tr>
<td>Nickel</td>
<td></td>
<td>e(0.8450 ln [Hard*]) + 0.0584</td>
</tr>
</tbody>
</table>
VOLUME 30, NUMBER 7 – JANUARY 1, 2004

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Human Health Criteria in μg/L</th>
<th>Warm Water Aquatic Habitat Criteria in μg/L</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acute</td>
<td>Chronic</td>
</tr>
<tr>
<td>Nitrite + Nitrate Nitrogen</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Nitrite – Nitrogen</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Phenolics</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Silver</td>
<td>100</td>
<td>1.72 (in Hard*)-6.59</td>
</tr>
<tr>
<td>Sulfate</td>
<td>250,000</td>
<td>e(0.8473 (in Hard*)+0.884)</td>
</tr>
<tr>
<td>Zinc</td>
<td>e(0.8473 (in Hard*)+0.884)</td>
<td>e(0.8473 (in Hard*)+0.884)</td>
</tr>
</tbody>
</table>

*Metal concentrations, for the purposes of human health criteria, shall be total recoverable values except hexavalent chromium, which is dissolved.
*Metal concentrations, for the purposes of warm water aquatic habitat criteria, shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.
*Hard = Hardness as mg/l CaCO3

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Chronic-Criteria Concentration (μg/l)</th>
<th>Acute-Criteria Concentration (μg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadmium</td>
<td>e(1.627203x10^-3,-0.225)</td>
<td>e(1.235403x10^-3,-0.927)</td>
</tr>
<tr>
<td>Chromium (hexavalent)</td>
<td>11</td>
<td>46</td>
</tr>
<tr>
<td>Copper</td>
<td>e(1.384503x10^-3,-1.700)</td>
<td>e(1.283203x10^-3,-1.700)</td>
</tr>
<tr>
<td>Cyanide (free)</td>
<td>6.2</td>
<td>22</td>
</tr>
<tr>
<td>Lead</td>
<td>e(1.273503x10^-3,-4.700)</td>
<td>e(1.273503x10^-3,-4.600)</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.91</td>
<td>5.7</td>
</tr>
<tr>
<td>Zinc</td>
<td>e(4.72503x10^-8,-0.824)</td>
<td>e(4.72503x10^-8,-0.824)</td>
</tr>
</tbody>
</table>

(6) The net discharge of aldrin, dieldrin, DDT, including DDE and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 10, [b]: Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 [2, 4, 5, 6, 7, and 8] of this administrative regulation upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate. This determination shall be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in sections 2, 4, 6, 7, 8, and 9 [2, 4, 5, 6, 7, and 8] of this administrative regulation. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in Chapter 3 of "Water Quality Standards Handbook", EPA, 1994, incorporated by reference in Section 12 [44] of this administrative regulation. In addition, an applicant shall supply the documentation listed in 401 KAR 5:026, Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 [Section 3(2)(c)] of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 5:026.

Section 11, [40]: Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995 incorporated by reference in Section 12, [44] of this administrative regulation, that KDPOES permit compliance with existing instream criteria shall result in substantial and widespread adverse economic and social impacts.

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet that a reasonable effort has been made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 12, [14]: 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 Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: December 3, 2003
FILED WITH LRC: December 4, 2003 at 9 a.m.
CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.
(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms
to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 5:020, 5:026, 5:029, and 5:030 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 5:026 to the surface waters of the Commonwealth. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(2) If 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 updates water quality criteria to reflect scientific developments. Three tables previously divided in this administrative regulation have been consolidated into one table and placed in Section 6 of this administrative regulation. The table now includes the Chemical Abstract Service number for each pollutant. Units were converted from pounds per micrograms per liter to kilograms per liter. Dilution flows for non-carcinogenic substances in fish tissue and radionuclides were modified from $\gamma_{max}$ to harmonic mean flow in order to more accurately reflect the duration of exposure under which these human health criteria were developed. Water quality criteria for domestic water supply sources have been revised to include 17 new limits, 64 stricter limits, and 14 limits were relaxed. Water quality criteria for fish tissue have been revised to include 10 new limits, 74 stricter limits, and 1 limit was relaxed. Water quality criteria for warm water aquatic habitat acute values have been revised to include 1 new limit and 1 stricter limit. Water quality criteria for warm water aquatic habitat chronic values have been revised to include 2 new limits, 1 stricter limit, and 1 relaxed limit.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to revise criteria to protect human health and to meet federal recommendations. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing revised and up-to-date criteria and water quality standards for the protection of surface waters of the Commonwealth in accordance with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not affect permitted facilities until they apply for reissuance of their KPDES permits. The amendment will affect any new, previously unpermitted wastewater dischargers. Municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this amended 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 revised water quality criteria will be implemented at the time of permit issuance to existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established.

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

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

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

(9) FISCAL NOTE ON LOCAL GOVERNMENT

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.


3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

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. This administrative regulation will affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

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 amended administrative regulation
relates to local governments' wastewater treatment service. KRS
224.10-100, 224.70-100, and 224.70-110 mandate 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 ex-
plain the fiscal impact of the administrative regulation.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other Explanation: This amended administrative regulation
sets forth protective criteria for instream uses designated by the
cabinet (see 401 KAR 5:026). Local governments will be required
to discharge effluents which assure attainment of the receiving
surface water's designated uses. The costs or savings of this
amended administrative regulation would ordinarily be passed
through to users; however, a local government that owns a public
wastewater treatment system could elect to absorb some or all of
the costs or savings. The revised water quality criteria will be im-
plemented at the time of permit issuance at existing facilities and
new dischargers and expanded facilities will comply with the revi-
sions. Additional costs may be incurred where criteria are more
stringent than before or where new criteria are established. Some
dischargers with KPDES permits may apply to increase discharge
limits, resulting in more antidegradation reviews.
TEACHERS' RETIREMENT SYSTEM
(Amendment)

102 KAR 1:035. Employment by retired members.

RELATES TO: KRS 161.605
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.605
provides that retired members may perform part-time or substitute
Teaching or be employed part time in a nonteaching capacity not to
exceed the equivalent of 100 days in a school year. This administra-
tive regulation provides the procedures necessary to administer
this statute.

Section 1. For purposes of this administrative regulation and
KRS 161.605, any period of substitute or part-time teaching of
three and one-half (3 1/2) hours or less shall be considered one-
half (1/2) day and any period greater than three and one-half (3
1/2) hours shall be considered a full day. Part-time employment in
a nonteaching capacity shall not exceed fifty-four (54) percent of a
full-time member's weekly schedule for the equivalent of a regular
school term (nine and one-fourth (9 1/4) months), and no more than
thirty-nine (39) percent of a full-time member's weekly sched-
ule for the equivalent of a twelve (12) month school term.

[Section 2. Retired members who perform part-time or substitu-
ted teaching or are employed part time in a nonteaching capacity
shall not pay any contributions to the Teachers Retirement System
for these employment services and their retirement annuity shall
not be reduced during these periods of service].

VIRGINIA MURRELL, Chairperson
APPROVED BY AGENCY: December 15, 2003
FILED WITH LRC: December 15, 2003 at noon
Public Hearing And Public Comment Period: A public hearing on
this administrative regulation shall be held on January 21, 2004, at
9 a.m. local time, in the Board Room of the main building of the
Teacher's Retirement System of the State of Kentucky located at
479 Versailles Road, Frankfort, Kentucky. Individuals interested
in being heard at this hearing shall notify this agency in writing by
January 15, 2004. 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 un-
less 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 February 2, 2004. Send written notification
of intent to be heard at the public hearing or written comments on
the proposed administrative regulation to Robert B. Barnes, General
Counsel, Teacher’s Retirement System of the State of Kentucky
479 Versailles Road, Frankfort Kentucky 40601, phone (502) 848-
8500, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) That this administrative regulation does: This administrative
regulation sets forth guidelines for measuring the days worked
during a school year for purposes of applying the retire and return-
to-work provisions of KRS 161.605.
(b) The necessity of this administrative regulation: Retired
members often work less than full days and this regulation pro-
vides guidelines for measuring such days.
(c) How this administrative regulation conforms to the content
of the authorizing statutes:
KRS 161.605 provides that members may return to work on a part-
time basis measured by days worked. KRS 161.310 requires the
board of trustees to promulgate regulations for the transaction of
the business of the retirement system.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administra-
tive regulation sets out guidelines for measuring the days worked as permitted under KRS 161.605.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendment deletes Section 2 of this regulation that is
now archaic due to statutory amendments.
(b) The necessity of the amendment to this administrative
regulation: The amendment deletes language that is now archaic
due to statutory amendments. Specifically, KRS 161.605 permits
retired members providing part-time and substitute teaching and
non-teaching services to make contributions to the retirement sys-
tem towards a second retirement account. Section 2 of the regula-
tion is in contravention to this statute in that it states that retired
members providing part-time and substitute teaching and non-
teaching services shall not make contributions to the retirement
system.
(c) How the amendment conforms to the content of the
authorizing statutes: KRS161.605 permits retired members to re-
turn to work in part-time and substitute teaching and non-teaching
positions and make contributions to the retirement system toward
a second retirement account. The amendment deletes language in
contravention to the statute.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment will eliminate language that is
in conflict with KRS 161.605 and the confusion that could other-
wise occur.
(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administra-
tive regulation: The amendment will be of assistance to all re-
ired KTRS members who return to work in a KTRS-covered posi-
tion. There are presently over 4,000 retired educators who have
returned to work in KTRS-covered positions.
(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 delete language that is archaic and already super-
seeded by statute. The amendment, however, will result in no im-
 pact on the affected groups other than the archaic and confusing
language of Section 2 of the regulation will be removed.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: None
First year: Same as (5)(a).
(b) On a continuing basis: Same as (5)(a).
Continuing cost or savings: Same as (5)(a).
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: There
is no funding needed for the implementation and enforcement of
the amendment of this regulation.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding is anticipated as a result of this amendment.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No fees
are established either directly or indirectly.
(9) TIERING: Is tiering applied? No.
Tiering is not applied as this regulation merely eliminates archaic
language in conformance with current statutes and practice.
TEACHERS’ RETIREMENT SYSTEM
(Amendment)

102 KAR 1:150. Optional benefits.

RELATES TO: KRS 161.620, 161.630
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.630

provides that a member of the Teachers' Retirement System retiring for service, may elect an optional benefit in lieu of the life annuity provided by KRS 161.620. This administrative regulation describes the various options which may be elected by the retiring member at the time of retirement.

Section 1. Option I - Straight Life Annuity with Refundable Balance. If no option is chosen by the retiring member, or if member is retiring for disability, Option I shall prevail, and shall consist of a life annuity (a retirement allowance payable throughout life). Upon death of a retired member, unless Options II, III, III(a), IV, IV(a), or V are selected, an amount consisting of the excess of his accumulated account at time of retirement over the amount of all annuity payments received by the member prior to his death shall be refundable to his named beneficiary or to his estate. (KRS 161.650.)

Section 2. Option II - Annuity for Ten (10) Years Certain and for Life Thereafter. (1) At time of retirement the retiring member makes application for retirement a sworn statement choosing Option II, and this option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments guaranteed for ten (10) years in any event and for life thereafter if the member survives the ten (10) year period from date of retirement. If the member's death occurs within the ten (10) year guarantee period, annuity payments shall continue for the remainder of the ten (10) year guarantee period to the named beneficiary, if any, or estate.

(2) Death during the first thirty (30) days immediately after retirement shall not affect the payment of this annuity for ten (10) years certain.

(3) Under Option II, a member may also select an annuity for five (5), fifteen (15), or twenty (20) years certain and for life thereafter under the conditions provided for the ten (10) years certain annuity, except that the length of time that the survivor would receive an annuity if the member dies would vary according to the years certain option selected. To select a years certain period other than ten (10) years certain, the member must specifically designate the number of years to be included in the years certain period. Selection of Option II without designation of a period of years certain shall be deemed to be the selection of Option II as an annuity for ten (10) years certain and for life thereafter.

(4) Under Option II, in the event of the death of both the member and the primary beneficiary before the expiration of the years certain period selected by the member, the surviving contingent beneficiary, if any, will be entitled to receive annuity payments for the remainder of the term certain. In the event of the death of the surviving contingent beneficiary who has been predeceased by the member and the primary beneficiary prior to the expiration of the years certain period, a lump sum payment of the present value of all remaining annuity payments will be paid to the contingent beneficiary's estate. In the event that the primary beneficiary dies before the expiration of the years certain period, but the member did not designate a contingent beneficiary or the contingent beneficiary predeceases the primary beneficiary, a lump sum payment of the present value of all remaining annuity payments will be paid to the primary beneficiary's estate, unless the primary beneficiary predeceases the member in which case a lump sum payment of the present value of all remaining annuity payments will be paid to the member's estate.

Section 3. Option III - Joint and Last Survivor Annuity. (1) The retiring member may file with application for retirement a sworn statement choosing Option III, and this option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments continuing for the life of the annuitant (member) plus the provision that upon his death prior to that of his named beneficiary his annuity shall be continued throughout the life of the beneficiary having an insurable interest in the life of the member.

If both annuitant and the named beneficiary die within thirty (30) days after date of retirement, this option shall be void and Option I shall prevail.

Section 4. Option III(a) - Joint and Last Survivor with "Pop-up" Option. The retiring member may file with application for retirement a sworn statement choosing Option III(a), which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I and incorporating the same guarantee provision as Option III with the additional provision that if the named beneficiary dies prior to the death of the annuitant, the benefit payable shall revert to that which would have been applicable under Option I at the time of retirement of the member.

Section 5. Option IV - Joint and Last Survivor Annuity, One-half (1/2) Benefit to Survivor. (1) The retiring member may file with application for retirement a sworn statement choosing Option IV, which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I above with payments continuing for the life of the annuitant (member) plus the provision that upon his death prior to that of his named beneficiary one-half (1/2) of his annuity shall be continued throughout the life of the beneficiary having an insurable interest in the life of the member. (2) If both the annuitant and the beneficiary die within thirty (30) days after retirement, this option shall be void and Option I shall prevail.

Section 6. Option IV(a) - Joint and Last Survivor with "Pop-up" Option. The retiring member may file with application for retirement a sworn statement choosing Option IV(a), which option shall be a lesser annuity actuarially equivalent to the annuity provided under Option I and incorporating the same guarantee provision as Option IV with the additional provision that if the named beneficiary dies prior to the death of the annuitant, the benefit payable shall revert to that which would have been applicable under Option I at the time of retirement of the member.

Section 7. Option V - General. In lieu of any option outlined above, the retiring member may file with his or her application for retirement a sworn statement requesting that some other benefit or benefits be paid to the member with or without a survivorship option that upon the death of the member would pay to the other person or persons having an insurable interest in the life of the member as he or she shall nominate in writing, provided the other benefit or benefits, together with the lesser annuity, shall be certified by the actuary to be of equivalent actuarial value to the annuity provided under Option I above and shall be approved by the board.

VIRGINIA MURRELL, Chairperson
APPROVED BY AGENCY: December 15, 2003
FILED WITH LRC: December 15, 2003 at noon
Public Hearing And Public Comment Period: A public hearing on this administrative regulation shall be held on January 21, 2004, at 9 a.m. local time, in the Board Room of the main building of the Teacher's Retirement System of the State of Kentucky located at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, 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 February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Robert B. Barnes, General
provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to improve conditions for youth housed in residential treatment facilities.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will amend an existing policy and procedure of the Department of Juvenile Justice to better define and clarify when searches of person or property are appropriate.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative rulemaking statutes of this administrative regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses, organizations or local governments will be affected by this regulation. The type and number of entities affected are all families, children, and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice.

(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 regulation will result in the provision of better services to the groups impacted.

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

(a) Initially: The implementation of this regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(b) On a continuing basis: The implementation of this regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Appropriations made by the General Assembly for the Department of Juvenile Justice to fulfill its statutory responsibilities.

(7) Provide an assessment of whether an 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 regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This
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Counsel, Teacher’s Retirement System of the State of Kentucky
479 Versailles Road, Frankfort Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert D. Dornea
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets forth the Board of Trustees’ approval for retirement plan options for members of the retirement system.
   (b) The necessity of this administrative regulation: By providing retirement plan options, members have the opportunity to retire under a plan best suited to their goals and circumstances.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.630 provides that members may select actuarially equivalent retirement options as approved by the board of trustees. KRS 161.310 requires the board of trustees to promulgate regulations for the transaction of the business of the retirement system.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the Board’s approval for optional retirement plans as authorized by KRS 161.630.
(2) If 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 provides that members who select Option III—Years Certain and Life Thereafter, will be deemed to have selected a period of 10 years certain if they do not otherwise designate a period of years certain. The amendment also provides guidelines under Option II for the succession of interest of the member, the primary beneficiary, the contingent beneficiary, and their respective estates, in the event of death of one or more of the parties.
   (b) The necessity of the amendment to this administrative regulation: The amendment would provide clarity to the years certain selections made by members so that both the member and retirement system are certain as to the years certain period that the member is selecting. This regulatory amendment will also be noted plainly on the retirement application. This amendment also provides guidelines for the member regarding the succession of interest of his beneficiaries including his and his beneficiaries’ estates.
   (c) How the amendment conforms to the content of the authorizing statutes: KRS 161.630 authorizes the board to approve actuarially equivalent optional retirement plans for members.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment will provide regulatory guidelines on important issues regarding the selection and administration of retirement option elections.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will be of assistance of all retired KTRS members who select the Option II retirement plan. The number of members who select Option II at the time of retirement changes every month so that a specific number cannot be provided, but approximately 3,200 members are currently under the Option II retirement plan.
(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 put into regulation what is already being done in practice so there will be no change noticed by the member.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None. First Year: Same as (5)(a).
   (b) On a continuing basis: Same as (5)(a). Continuing cost or savings: Same as (5)(a).
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Member contributions pursuant to KRS 161.540, employer contributions pursuant to KRS 161.550 and investment income earned on those contributions provide the source of funding for the retirement allowances received by members, but again, there will be no addi-
tional costs as a result of this amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated as a result of this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established either directly or indirectly.
(9) TIERING: Is tiering applied? No. Tiering is not applied as this regulation merely provides guidelines for the implementation of the Option II retirement plan and is not a regulation that can be tiered to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address” as contemplated by the tiering statute, KRS 13A.210(1).

JUSTICE CABINET
Department of Juvenile Justice
(Amendment)


RELATES TO: KRS 15A.065, 15A.067, 200.080 to 200.120, Chapters 600 to 645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The “Department of Juvenile Justice Policy and Procedures Manual: Program Services, 20033” is incorporated by reference and includes the following:
300 Programs and Services
300.1 Communication and Correspondence
301 Reception and Orientation
301.1 Youth’s Personal Belongings and Dress Code
302 Individualized Treatment/Aftercare Planning
303 Treatment Team Composition, Functioning and Responsibility
306 Phase System
307 Counseling Services
309 Family Involvement in Treatment Process
310 Family and Community Contacts: Mail, Telephone, Visitaton, Off-Grounds Activities, Day Release and Furlough
314 Youth Council
315 Use of Nongovernmental Funds and Youth Activity Funds
316 Youth Work Programs
317 Recreation
318 Behavior Management
318.1 Discipline
318.2 Disciplinary Review
318.3 Discipline: Level 5 Facilities
319 Required Staffing for Supervision of Youth
319.1 Facility Capacities and Staffing Requirements
320 Transportation of Youth
321 Critical Incident Reports
323 Isolation
324 Mechanical Restraints
325.1 Searches
327 Escape/AWOL
328 Individual Client Record
329 Progress Notation
regulation does not establish any fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation sets forth the policies and procedures of all offices and facilities of the Department of Juvenile Justice and is effective statewide.

JUSTICE CABINET
Department of Juvenile Justice
(Amendment)


RELATES TO: KRS 15A.065, 15A.067, 200.080 to 200.120, Chapters 600 to 645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 640.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", 2003 [2002], is incorporated by reference and includes the following:

600 Initial Contact & Court Support
601 Case Registration and Case Management
602 Service Complaints
603 Children’s Benefits
603.1 Title IV-E: Federal Foster Care Maintenance Payments
603.2 Trust Funds
604 Individual Treatment Plans
605 Juvenile Service Case Records
605.1 Running Records
605.2 Critical Incident Reports
606 Transportation of Committed Youth
607 Probation
607.1 Revocation of Probation
607.2 Termination of Probation
608 Juvenile Offender Shock Probation
609 Re-Evaluation for Out-of-Home Placement
609.1 Youth Awaiting Out-of-Home Placement
609.2 Services to Youth in Out-of-Home Placement
610 Authorized Leave for Youth in Out-of-Home Placement
610.1 Youth AWOL/Escape
611 Mental Health Services
611.1 Mental Health Emergencies
617 Community Supervision
617.1 Intensive Aftercare Program
618 Juvenile Intensive Supervision Team (JIST)
620 Supervised Placement Revocation
621 Searches
626 Sex Offender Treatment
629 Administrative Discharge from Commitment
690 Intake, Case Registration and Planning
690.1 Commitment
690.2 Conviction as a Juvenile Offender
690.3 Transportation of Committed Youth
690.4 Children’s Benefits
690.5 Title IV-E: Federal Foster Care Maintenance Payments
690.7 Trust Funds
690.8 Service Complaints
690.9 Juvenile Service Case Records
690.10 Service Recordings
690.11 Critical Incident Reports
694 Predisposition/Pre-Sentencing Investigation

602 Youth Travel Permits
603 Probation
603.1 Youthful Offender Shock Probation
605 Termination of Probation
605.1 Revocation of Probation
606 Out-of-Home Placement
606.3 Out-of-Home Initial Case Planning
608 Placement With Relative
609 Private Child Care Referral
610 Independent Living
611 Residential Placement
611.1 Placement in Psychiatric Care
611.2 Detention
612 Youth Awaiting Placement
613 youths in Placement
614 Authorized Leave
615 Youth AWOL
616 Aftercare Placement: Planning
617 Supervised Placement/Intensive Aftercare
618 Juvenile Intensive Supervision Team (JIST)
621 Search, Seizure, Chaining of Custody
626 Juvenile Offender
627 Juvenile Offender: Sexual Offender
628 Juvenile Offender: Sexual Offender Registration
629 Discharge from Commitment

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

RONALD L. BISHOP, Commissioner
APPROVED BY AGENCY: December 10, 2003
FILED WITH LRC: December 10, 2003 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004, at 9 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Michael Keith Horn, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Keith Horn
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation will amend existing policies and procedures of the Department of Juvenile Justice as well as implement new policies and procedures to improve conditions and services for youth housed in residential treatment facilities and otherwise served by the Department of Juvenile Justice.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this admin-
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Administrative regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

4. How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and have continued to improve conditions for youth housed in residential treatment facilities.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This administrative regulation will amend existing policies and procedures of the Department of Juvenile Justice as well as implement new policies and procedures to improve conditions and services for youth housed in residential treatment facilities and other services provided by the Department of Juvenile Justice.
   (b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.
   (c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.
   (d) How the amendment will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and have continued to improve conditions for youth housed in residential treatment facilities.

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 regulation will result in the provision of better services to the groups impacted.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: The implementation of this regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.
   (b) On a continuing basis: The implementation of this regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

6. What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Appropriations made by the General Assembly for the Department of Juvenile Justice to fulfill its statutory responsibilities.

7. Provide an assessment of whether an 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 regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation sets forth the policies and procedures of all offices and facilities of the Department of Juvenile Justice and is effective statewide.

JUSTICE CABINET
Department of Juvenile Justice
(Amendment)


RELATES TO: KRS 15A.065, 15A.067, 15A.200-245, 15A.305, 200.080 to 200.120, Chapters 600 to 645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

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

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", 2003 [2002], is incorporated by reference and includes the following:

700 Detention Services Delivery System
701 Criteria for Admission
701.1 Census and Population Reports
702 Intake, Reception and Orientation
703 Detention Risk Assessment
704 Alternatives to Secure Detention
704.1 Supervision of Youth in Alternative Detention Programs
704.2 Revocation of Youth in Alternative Detention Programs
705 Individual Client Records
705.1 Medical Records
705.2 Progress Notes
706 Grievance Procedure
707 Bed Capacities and Staffing of Regional Juvenile Detention Facilities
708 Classification of Youth for Housing and Program Assignment
709 Security and Control
710 Shift and Log Reports
711 Transportation of Youth
712 Escape/AWOL
713 Restraints
714 Searches
715 Critical Incident Reports
716 Behavior Management
717 Discipline and Special Behavior Management
718 Disciplinary Review
720 Programs and Services
720.1 Library Services
720.2 Recreation and Structured Activities
720.3 Religious Programs
720.4 Youth Work Details
720.5 Social Services
720.6 Family and Community Contact
722 Nongovernmental Funds
723 Health Services
724 Suicide Prevention and Intervention
725 Educational Programming and Instructional Services
725.1 Instructional Staffing
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Keith Horn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation will amend existing policies and procedures of the Department of Juvenile Justice as well as implement new policies and procedures to improve conditions and services for youth housed in detention facilities and otherwise served by the Department of Juvenile Justice.

(b) The necessity of this administrative regulation: This regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile justice program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to improve conditions for youth housed in detention facilities.

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

(e) How the amendment will change this existing administrative regulation: This regulation will amend existing policies and procedures of the Department of Juvenile Justice as well as implement new policies and procedures to improve conditions and services for youth housed in detention facilities and otherwise served by the Department of Juvenile Justice.

(f) The necessity of the amendment to this administrative regulation: This regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile justice program.

(g) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes of this regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(h) How the amendment will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to improve conditions for youth housed in detention facilities.

(i) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses, organizations, or local governments will be affected by this regulation. The type and number of entities affected are all facilities, children and adults who may be benefited by the implementation of a statewide juvenile justice service program through the current policies and procedures of the Department of Juvenile Justice.

(j) 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 administrative regulation will result in the provision of better services to the groups impacted.

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

(a) Initially: The implementation of this administrative regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(b) On a continuing basis: The implementation of this administrative regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Appropriations made by the General Assembly for the Department of Juvenile Justice to fulfill its statutory responsibilities.

(d) 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 increases any fees.

(TIERING): Is tiering applied? Tiering is not applied because the regulation sets forth the policies and procedures of all offices and facilities of the Department of Juvenile Justice and is effective statewide.
TRANSPORTATION CABINET
Department Of Vehicle Regulation
Division Of Motor Carriers
(Amendment)

601 KAR 1:005. Safety administrative regulation.

RELATED TO: KRS 138.665, 281.600, 281.730, 281.750,
281.880, 49 C.F.R. 40, 382-383, 385, 390-397
STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730,
281.750, 281.880 to 281.888, 49 C.F.R. 40, 382-383, 385, 390-397
NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600
authorizes the Transportation Cabinet to promulgate administrative
regulations relating to safety requirements. This administrative
regulation establishes requirements for motor carriers operating in
Kentucky.

Section 1. Definitions. (1) "City bus" is defined in KRS
281.013(1).
(2) "Daylight hours" means that period of time one-half (1/2)
hour before sunrise through one-half (1/2) hour after sunset.
(3) "Farm-to-market agricultural transportation" means the
operation of a motor vehicle that is controlled and operated by a
farmer who, as a private motor carrier is using a vehicle:
(a) To transport agricultural products from his farm;
(b) To transport farm machinery or farm supplies to his farm;
(c) Generally thought of as farm machinery; and
(d) Which is not transporting hazardous materials of a type or
quantity that requires the vehicle to be marked or placarded
in accordance with 601 KAR 1:025.
(4) "Load limit" means the seating capacity established by the
manufacturer for a passenger-carrying vehicle plus an additional
twenty-five (25) percent.
(5) "Suburban bus" is defined in KRS 281.013(2).
(6) "Utility" means an entity which provides water, electricity,
natural gas, sewage disposal, telephone service, television cable,
or community antenna service.

Section 2. Governing Federal Regulations. A commercial mo-
tor vehicle and its operator meeting the definitions set forth in 49
C.F.R. 390.5 operating for-hire or in private carriage, interstate or
intrastate, except as set forth in Section 3 of this administrative
regulation shall be governed by the following Motor Carrier Safety
Regulations adopted and issued by the United States Department of
Transportation, and are hereby adopted without change:
(1) 49 C.F.R. Part 40, as effective October 1, 2003 [994],
Procedures for Transportation Workplace Drug Testing Programs;
(2) 49 C.F.R. Part 382, as effective October 1, 2004 [2004],
Controlled Substances and Alcohol Use and Testing;
(3) 49 C.F.R. Part 383, as effective October 1, 2003 [2004],
Commercial Driver's License Standards; Requirements and Pen-
alties;
(4) 49 C.F.R. Part 385, as effective October 1, 2003 [2004],
Safety Fitness Procedures;
(5) 49 C.F.R. Part 390, as effective October 1, 2003 [2004],
General;
(6) 49 C.F.R. Part 391, as effective October 1, 2003 [2004],
Qualifications of Drivers;
(7) 49 C.F.R. Part 392, as effective October 1, 2003 [2004],
Driving of Motor Vehicles;
(8) 49 C.F.R. Part 393, as effective October 1, 2003 [2004],
Parts and Accessories Necessary for Safe Operation;
(9) 49 C.F.R. Part 395, as effective October 1, 2003 [2004],
Hours of Service of Drivers;
(10) 49 C.F.R. Part 396, as effective October 1, 2003 [2004],
Inspection, Repair and Maintenance; and
(11) 49 C.F.R. Part 397, as effective October 1, 2003 [2004],
Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemp-
tions and exceptions to compliance with the provisions of Section 2
of this administrative regulation are adopted:
(1) (a) A city or suburban bus shall not be required to comply
with the federal regulations adopted by or incorporated by refer-
ence in this administrative regulation.
(2) (a) The operator of one (1) of these vehicles who is required by
KRS Chapter 281A to obtain a commercial driver's license shall
comply with the provisions of 49 C.F.R. Parts 382 and 383 and
provide proof of having passed the medical examination set forth in
49 C.F.R. Part 391 or have received a medical waiver as set forth in
601 KAR 11:040 and subsection (7) of this section for intrastate
operators or as set forth in 49 C.F.R. Part 381 for interstate op-
erators.
(2)(a) A motor vehicle operated by the federal government, a
state government, a county government, a city government, or a
board of education shall not be required to comply with the federal
regulations adopted in this administrative regulation.
(3) (a) An operator of one (1) of these vehicles who is required by
KRS Chapter 281A to obtain a commercial driver's license shall
provide proof of having passed the medical examination set forth in
49 C.F.R. Part 391 or have received a medical waiver as set forth in
601 KAR 11:040 and subsection (7) of this section for intrastate
operators or as set forth in 49 C.F.R. Part 381 for interstate op-
erators.
(c) The operator of a vehicle specified in paragraph (a) of this
subsection shall meet the requirements of 49 C.F.R. Part 382 re-
lating to drug and alcohol testing.
(3)(a) A motor vehicle which is used exclusively in intrastate
commerce and exclusively in farm-to-market agricultural transpor-
tation when operated during daylight hours by a private motor car-
rier shall not be required to comply with Title 49, Code of Federal
Regulations, Part 393, Subpart B, relative to lighting device re-
quirements.
(b) A motor vehicle as described in paragraph (a) of this sub-
section shall have two (2) stop lamps and mechanical turn signals
as set forth in 49 C.F.R. 393, Subpart B.
(4)(a) A motor vehicle which is used exclusively in intrastate
commerce and exclusively for the transportation of primary forest
products from the harvest area to a mill or other processing facility
which is located at a point not more than fifty (50) air miles (eighty
and five-tenths (80.5) air kilometers) from the harvest area when
operated during daylight hours shall not be required to comply with
Title 49, Code of Federal Regulations, Part 393, Subpart B relative
to lighting devices requirements.
(b) A motor vehicle as described in paragraph (a) of this sub-
section shall have two (2) stop lamps and mechanical turn signals
as set forth in 49 C.F.R. 393, Subpart B.
(5) Except for a transporter of hazardous materials subject to
the requirements of 601 KAR 1:025, a motor vehicle operator who
is operating a vehicle in intrastate commerce shall not be required to
be twenty-one (21) years of age as set forth in 49 C.F.R.
391.11(b)(1). However, he shall be at least eighteen (18) years of
age.
(6) A utility motor carrier if operating exclusively in intrastate
commerce shall be exempt from the maximum and on-duty hours
for drivers set forth in 49 C.F.R. 395.3 during an emergency as
defined in 49 C.F.R. 395.5 which requires their employees to work
to restore service.
(7) Medical waivers for intrastate drivers.
(a) A commercial vehicle driver who operates a commercial
vehicle exclusively in intrastate commerce within Kentucky, may
apply for a medical waiver of the requirements of 49 C.F.R.
Part 391 under the provisions of 601 KAR 11:040.
(b) If a medical waiver is issued, the waiver shall be in the
possession of the commercial driver any time he is operating a
commercial motor vehicle.
(8) Except for a farm-to-market agricultural transportation mo-
tor vehicle with a gross vehicle weight rating of 26,000 pounds or
less, a motor carrier which operates exclusively in intrastate commerce
shall:
(a) Apply for an intrastate motor carrier identification number
on Form TC 95-1, "Kentucky Trucking Application", April 2000
edition or Form TC 92-150, "Application for Intrastate Carrier Iden-
tification Number", March 1999 edition;
(b) Display the assigned intrastate motor carrier identification
number and the name of the motor carrier in the same manner as
required pursuant to 49 C.F.R. Part 390.21 except the identification
number shall be preceded by the letters "USDOT" and followed by

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the letters "KY".

(9) Notwithstanding 49 C.F.R. Part 391.68(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. Parts 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" issued by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated with improper or invalid registration, without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these administrative regulations.

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 C.F.R. 390.5. The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Licensure.

Section 8. Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370 on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 9. Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 C.F.R. Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 10. Random Alcohol Testing Rate. Commercial Motor Vehicle employers shall randomly test a percentage of the average number of driver positions employed by them. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually as set forth in 49 C.F.R. 382.302.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "North American Uniform Out-Of-Service Criteria" revised January 1, 2004 [April 1, 2006] by the Commercial Vehicle Safety Alliance;

(b) 62 Fed. Reg. 16370, April 4, 1997;

(c) TC 95-1, revised April, 2000; and

(d) TC 92-150, revised March, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any of the weigh stations operated by the Transportation Cabinet and at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MACK BUSHART, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: December 12, 2003

FILED WITH LRC: December 5, 2003 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 at 10 a.m. local time at the Transportation Cabinet, State Office Building, 10 Floor Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004 five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by January 3, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 February 2, 2004. Send written notification of

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intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to the interstate motor carriers. It also sets forth the safety standards for intrastate carriers. These safety standards include guidelines for passing a medical examination or obtaining some form of medical waiver for the individual driver.

(b) The necessity of this administrative regulation: Pursuant to KRS 281.600, the cabinet is required to regulate motor carriers and to apply the Federal Motor Carrier Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the federal safety regulations and clarifies other requirements for intrastate compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for motor carriers driving in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the state regulation by adopting current federal regulations and eliminating a federal regulation which is no longer applicable.

(b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the updated federal regulations to remain compliant with the Federal Motor Carrier Act and fulfill the directive of the regulation in KRS 281.600.

(c) If the amendment conforms to the content of the authorizing statutes: It adopts the Federal Motor Carrier Act provisions regarding motor carrier safety.

(d) How the amendment will assist in the effective administration of the statutes: This will allow the cabinet to apply and enforce current safety requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect motor carriers directly and will have an indirect impact on the general motoring public. There are an estimated 40,000 motor carriers operating within 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: These safety standards (both state and federal) will be applicable to motor carriers. Intrastate carriers are already subject to federal provisions and this should not impact their day-to-day operations. This regulation should also have a positive impact on other motorists by maintaining safety on roads and highways they share with motor carriers.

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

(a) Initially: No known cost.

(b) On a continuing basis: There is on-going cost related to administration of the motor carrier program within the cabinet and enforcement of motor carrier regulations through vehicle enforcement. These amendments should not increase the current cost for these programs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet has not increased fees and does not anticipate a need for increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied?: Tiering is applied to the extent that these larger vehicles are subject to more stringent regulations with regard to their operation than standard-size vehicles.

TRANSPORTATION CABINET
Department of Vehicle Regulation

(Amendment)

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS 281.600, Chapter 281A, 49 C.F.R. 383, 391

STATUTORY AUTHORITY: KRS 281.600, 281A.040, 49 C.F.R. 383 Subpart E, 391 Subpart E

NECESSITY, FUNCTION, AND CONFORMITY: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 C.F.R. 391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 C.F.R. 391. He is subject however, to Kentucky driver qualification requirements. In 501 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 C.F.R. Part 391 on both an Interstate and Intrastate commerce basis. However, medical waivers in addition to those allowed in 49 C.F.R. 391.49 are allowed by the Federal Highway Administration for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

(a) Operates exclusively in intrastate commerce; and

(b) Has failed to meet the physical requirements of 49 C.F.R. 391, Subpart E, which govern 601 KAR 1:005.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form TC 94-39, "Request for Medical Waiver" effective December 1996.

(3)(a) A copy of the completed medical examination form required by 49 C.F.R. 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been completed by a health care professional as adopted in 601 KAR 1:005, Section 7.

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 C.F.R. 391 Subpart E.

(4)(a) Except as provided in paragraph (b) of this subsection, a copy of the applicable supplemental medical report form shall be completed by a licensed doctor of medicine or osteopathy.

(b) The "Vision Conditions" form shall be completed by a licensed doctor of optometry or ophthalmology. The licensed doctor of medicine or osteopathy shall determine which of the following supplemental medical report forms are applicable to the medical waiver applicant:

1. "Cardiovascular"
2. "Neurological"
3. "Musculoskeletal"
4. "Metabolic"
5. "Alcohol or Drug Dependence"
6. "Mental and Emotional Conditions"

(4) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

Section 2. (1) The Division of Driver Licensing shall base its
decision on granting the requested medical waiver on the information obtained from the following:
(a) Driving history record of the applicant;
(b) Original medical examination form; and
(c) Supplemental medical report form;
(d) A skills test if suggested by the Medical Review Board, the applicant if his medical problem is ophthalmologic or visual, or the provisions of this administrative regulation; and
(e) Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:
(a) Paraplegics or quadriplegics. If the applicant has a loss or impairment of foot, leg, arm, hand or fingers, he shall not be issued a medical waiver unless he passes the skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.
(b) To be considered for a medical waiver, the commercial driver shall:
1. Have a distance visual acuity of 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;
2. Have horizontal visual fields which are not narrowed to less than 110 degrees of total visual field;
3. Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;
4. Not wear biopic lenses; and
5. Not have uncorrectable double vision.
(c) Hearing. A waiver of 49 C.F.R. 391.41(11) shall not be issued.
(d) Epilepsy or other condition likely to cause loss of consciousness. A commercial driver with epilepsy or other condition which may cause loss of consciousness shall:
1. Have been seizure free for one (1) year prior to requesting the waiver;
2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and
3. Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.
(e) Cardiovascular:
1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:
   a. A fainting or blackout spell;
   b. Uncontrollable attacks of choking, suffocation, or shortness of breath; or
   c. Uncontrollable instances of syncope or vertigo.
2. A commercial driver shall not have heart disease symptoms while:
   a. Operating a motor vehicle; or
   b. Sitting at rest.
3. A commercial driver shall not have:
   a. Difficulty in breathing;
   b. Painful breathing; or
   c. An aortic or ventricular aneurysm.
4. A commercial driver’s:
   a. Blood pressure shall not be irregular; or
   b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.
(f) Diabetes. A commercial driver shall not have:
1. An uncontrolled condition of diabetes; or
2. In the year immediately preceding a waiver request, had an instance of diabetes shock or coma.
(g) Alcohol or drugs. A commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.
   (h) Emotional or mental. A commercial driver shall:
   1. Not exhibit homicidal, suicidal, or destructive behavior;
   2. In the year immediately preceding a waiver request, not have experienced bouts of:
      a. Extreme anxiety;
      b. Depression;
      c. Paranoia;
      d. Confusion;
      e. Delusions; or
      f. Hallucinations.
3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition.

Section 3. (1) If a commercial driver is granted a medical waiver, he shall submit to medical reexaminations required by the Division of Driver Licensing.
(2) After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:
(a) The condition for which a waiver was issued has not worsened; and
(b) An additional non qualifying condition has not manifested.

(3) (a) The driving history record of a commercial driver approved for a medical waiver may be evaluated by the Division of Driver Licensing at any time.
(3) (b) If a review of the person’s driving history record, submitted medical information, or related items would cause the person to ordinarily be referred to the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.
(4) (a) After completion of a test of the commercial driver’s driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit to the Division of Driver Licensing:
   1. The test results; and
   2. Recommendations for waiver refusal or restrictions on a medical waiver.
(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver’s motor vehicle operator’s license or commercial driver’s license.
(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.
(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.
(7) If an intrastate medical waiver is issued to a person with a pacemaker, shall submit an annual report on the functioning of the device to the Division of Driver Licensing.
(8) A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:
   (a) Submit to a periodic report requested by the Division of Driver Licensing; or
   (b) Report a skills test.
(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver’s:
   (a) Physical or mental condition; or
   (b) Employment or employment conditions.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may request reconsideration from the Commissioner of the Department of Vehicle Regulation. In considering the request for reconsideration, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:090 a review of the case and recommendation on the request for reconsideration.
(2) The request for reconsideration shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.
(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the request for reconsideration shall review the request when requested by the Commissioner.
(4) The commissioner’s review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information.
requested by the commissioner.

(5) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to the:
(a) Commercial driver; and
(b) Division of Driver Licensing.

(5) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may file an appeal with the Secretary of the Transportation Cabinet in accordance with the provisions of KRS Chapter 13B.

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be referred to the Medical Review Board under the provisions of 601 KAR 13:090.

Section 6. Waiver Cancellation. If at any time after the issuance of a medical waiver, the Division of Driver Licensing cancel the waiver pursuant to the provisions of this administrative regulation, the driver's commercial driver's license shall also be cancelled.

Section 7. Material Incorporated by Reference. (1) The following Transportation Cabinet forms are incorporated by reference as a part of this administrative regulation:
(a) TC 94-38, "Request for Medical Waiver" effective December 1998;
(b) TC 94-38A "MEDICAL REPORT FORM - Vision" effective October 1998;
(c) TC 94-38B "MEDICAL REPORT FORM - Metabolic" effective June 1995;
(d) TC 94-38C "MEDICAL REPORT FORM - Neurological" effective April 1996;
(e) TC 94-38D "MEDICAL REPORT FORM - Cardiovascular" effective March 1996;
(f) TC 94-38E "MEDICAL REPORT FORM - Musculoskeletal" effective March 1996;
(g) TC 94-38F "MEDICAL REPORT FORM - Alcohol or Drug Dependence" effective February 1991; and
(h) TC 94-38G "MEDICAL REPORT FORM - Mental and Emotional Conditions" effective March 1994.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, from the Transportation Cabinet, Division of Driver Licensing, Second Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-6800. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. It is also available from the Driver Licensing Office of any Circuit Court Clerk.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: November 12, 2003
FILED WITH LRC: December 5, 2003 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 at 10 a.m. at the Transportation Cabinet, State Office Building, 10th Floor Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by January 13, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 February 2, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7850, fax (502) 564-5236.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Dana C. Fugazzi

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the procedures and standards for medical waivers for intrastate operators of commercial motor vehicles.
(b) The necessity of this administrative regulation: This administrative regulation is needed to set forth the process for obtaining medical waivers for intrastate operations of commercial motor vehicles.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 291A.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for intrastate operators of commercial motor vehicles to obtain medical waivers.

(2) If 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 updates the state regulation by correcting the language concerning medical waivers and hearing tests to indicate that a medical waiver for hearing shall not be issued.
(b) The necessity of the amendment to this administrative regulation: To correct the language of the regulation which mistakenly left out a word, thereby resulting in an incorrect statement concerning hearing tests and the availability of medical waivers for intrastate operators of commercial motor vehicles.
(c) How the amendment conforms to the content of the authorizing statutes: It establishes that an intrastate medical waiver of 49 C.F.R. 391.41(11) hearing requirements will not be issued.
(d) How the amendment will assist in the effective administration of the statutes: This will allow the cabinet to apply and enforce current statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will impact those commercial drivers who operate exclusively in intrastate commerce and who apply for an intrastate medical waiver.

(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 corrects language in the regulation in order to establish that there is no intrastate medical waiver of the driver qualification requirement of 49 C.F.R. 391 pertaining to hearing.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None expected.
(b) On a continuing basis: There is no expected increase in costs either initially or on a continuing basis.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet has not increased fees and does not anticipate a need for increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No. The application requirements will be applied equally to all applicants.
EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education (Amendment)

703 KAR 5:020. The formula for determining school accountability [performance classifications and school rewards].

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes a single assessment system with two (2) accountability dimensions: one (1) addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., procedures for determining successful schools, school rewards, and classifications of schools within the school accountability program.

Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows:

(a) Reading at grades 4, 7, and 10;
(b) Mathematics at grades 5, 8, and 11;
(c) Science at grades 4, 7, and 11;
(d) Social studies at grades 5, 8, and 11;
(e) Arts and humanities at grades 5, 8, and 11;
(f) Practical living/occupational studies at grades 5, 8, and 10;
(g) Writing at grades 4, 7, and 12;
(h) Writing portfolio at grades 4, 7, and 12; and
(i) Alternate portfolio at 4, 5, and the last anticipated year of attendance at the high school level.

(2) The norm-referenced tests shall be administered in reading/language arts and mathematics at the end of primary, grade 6, and grade 9.

(3) In order to comply with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., the Kentucky Department of Education shall augment the norm-referenced test to appropriately measure Kentucky's core content in reading and mathematics at grades 3 and 6. At grades 5 and 8 an additional augmented norm-referenced test shall be administered in reading and at grades 4 and 7 an additional augmented norm-referenced test shall be administered in mathematics.

(4) Required participation in the National Assessment of Educational Progress, if a school is selected by the U.S. Department of Education or its designated contractors to participate in the National Assessment of Educational Progress in reading, mathematics, and science at grades 4 and 8, the school shall participate fully. (Definitions.) (1)"Academic index" means the summation statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.645(1)(b).

(2) "Accountability index" means the statistic defined in KRS 158.645(1)(b).

(3) "Accountability index" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).

(4) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014. The calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is a horizontal line at eighty (80) minus one (1) standard error of measurement.

(5) "Alternate portfolio" means that component of the assessment system designed for students with legally identified disabilities who cannot with the assistance of adaptive devices available participate in the regular curriculum.

(6) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(7) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress shall be measured.

(8) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(9) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(10) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(12) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.645(1)(c), (d), and (f).

(13) "Reward share" means the unit of money to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(14) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth.

(15) "School" means an A1 school as defined in 703 KAR 5:020 Section 1(4).

(16) "School recognition points" means those points as defined in this administrative regulation for the purpose of recognizing school standing.

(17) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(18) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(19) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(20) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(21) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(22) "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(23) "Threshold" means the point on the goal line corresponding to the end year of the biennium.

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Section 2. Academic and Nonacademic Index Calculations. (1) For purposes of calculating a school’s academic indices, the school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades. The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete response shall be assigned a score of zero;

(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);

(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);

(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);

(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);

(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);

(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(a) Attendance, primary through grade twelve (12);

(b) Retention rates, grades four (4) through twelve (12);

(c) Dropout rates, grades seven (7) through twelve (12); and

(d) Successful transition to adult life for the graduating students.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school level. The same requirement shall be applied to calculations required by “No Child Left Behind Act of 2001” 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of two (2) components. Component one (1) consists of academic indices and the nonacademic index. Component two (2) shall be an index created from a national norm-referenced test (NRT). Component one (1) shall comprise ninety-five (95) percent of the total index. Component two (2) shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

### Table: Accountability Index Components

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### Table: Nonacademic Index Components

| Attendance Rate | 4% | 3.80% |
| Retention Rate  | 1% | 0.95% |
| National-Norm-referenced Test | (Not Applicable) | 5.00% |

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### Table: Nonacademic Index Components

| Attendance Rate | 4% | 3.80% |
| Retention Rate  | 4% | 3.80% |
| Dropout Rate    | 2% | 1.90% |
| National-Norm-referenced Test | (Not Applicable) | 5.00% |

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<th>Component One and Two (With NRT)</th>
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</thead>
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### Table: Nonacademic Index Components

| Attendance Rate | 2% | 1.90% |
| Retention Rate  | 0.5% | 0.48% |
| Dropout Rate    | 3.75% | 3.56% |
| Successful Transition to Adult Life | 3.75% | 3.56% |
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(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component one (1) of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component two (2) of the accountability index shall be derived from the national norm-referenced assessment as follows:

(a) Student performance standards comparable to those used in component one (1) and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation;

(c) The component two (2) index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 4 and 5 at the elementary level, grades 7 and 8 at the middle school, or grades 10, 11, and 12 at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school does not contain a grade component when the national norm-referenced test administered shall have its accountability index calculated using only the weights specified as component one (1) of the index in Section 3 of this administrative regulation. Schools that have more than 1 grade at which the national norm-referenced test is administered shall have those grades combined to form the basis for component two (2) of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the biennium for which the waiver is requested. [For the biennium ending in school year 2003-04, the waiver request must be received by the Kentucky Department of Education by September 1, 1999.]

Section 5. Schools Having More Than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (0.8), the school shall be considered a reconfigured school.

(2) A school that would be considered a reconfigured school in the 1998-1999 school year shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school’s nonacademic data. Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs.

(a) For the purpose of assigning a school performance judgment of meets goal, progressing, or assistance, a school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school's classification.

(b) To determine whether a reconfigured school meets adequate yearly progress for the first three (3) years the school is reconfigured, the determination shall be made based on whether the school meets the annual measurable objectives established in reading and mathematics and has a participation rate for the school and its subpopulations of sufficient size of at least ninety-five (95) percent. Beginning with the fourth year of the school's reconfiguration, the school shall meet all requirements for making adequate yearly progress as provided in Section 10(2) of this administrative regulation.

(c) In the alternative to paragraph (b) of this subsection, a school district may submit to the Department of Education a plan for reconstituting data necessary to determine whether a reconfigured school has met all requirements for meeting adequate yearly progress taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in annual calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the erasing of individual student data. This request shall include the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be
drawn from a school's baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;
(b) Year 2003 = baseline percent novice minus the required novice reduction factor multiplied by two (2);
(c) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by three (3);
(d) Year 2005 = baseline percent novice minus the required novice reduction factor multiplied by four (4);
(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);
(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and
(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholaractic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice reduction requirements of this section. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no graduating class at which the norm-referenced test is administered are included. If not otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section R(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section R(5) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only once (1) time for meeting or passing each point. A school earning this reward and subsequently failing below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed $2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal: number of certified full-time equivalent (FTE) staff times three (3) shares;
(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;
(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and
(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) during the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments. The starting point for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grade and producing school level accountability statistics including:

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(a) Percent proficient and above in reading and mathematics;
(b) Accountability indices;
(c) Graduation rates; and,
(d) Participation rates.
(3) These statistics shall be used to determine if a school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(11) of this administrative regulation.
(4) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:
(a) The school and all subpopulations of sufficient size met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 6:001;
(b) The school showed progress or met the criteria on the accountability index at the elementary and middle school accountability levels as defined in 703 KAR 5:001;
(c) The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 6:001; and
(d) Had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size.
(5) No child left behind (NCLB) improvement school determination. A school shall be identified as a "NCLB improvement school" if for two (2) consecutive years the school fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 - reading or mathematics.
(6) Reward or recognition. For a school meeting adequate yearly progress for two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

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Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school is identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq.; including information that all students enrolled in the school have the option to transfer, at the district's expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as a NCLB improvement school, the local district shall require that school to provide supplemental services as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq., and comply with all relevant Kentucky statutes, and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of three (3) full years after being identified, the local district shall plan for alternative school governance required by 20 U.S.C. 6301 et seq., and continue to
provide services required in Section 111(1), (2), and (3) of this administrative regulation. If adequate yearly progress in both reading and mathematics is not made four (4) years after being identified as a NCLB improvement school, the alternative governance plan shall be implemented.

Section 12. Duration of Consequences. (1) If a school identified as a NCLB improvement school makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after the identification, the school shall no longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five calendar 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 February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-0321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a single assessment system with 2 accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of this administrative regulation: This administrative regulation provides necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation specifies for the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6454, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including types of assessments to be administered, grades and content areas to be assessed, weights of each assessment, and details of how schools will be held accountable.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, 158.6454, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(2) If 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 provides specifics on how Kentucky will become compliant with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability programs.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: School staff will be provided the specifics for implementing the state-wide assessment and accountability programs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The additional cost for implementing this administrative regulation is currently estimated to be approximately $3 million (testing costs to add math and reading assessments required by federal law and to meet test results reporting timelines required by federal law).
(b) On a continuing basis: The additional cost for continuing this administrative regulation is currently estimated to be approximately $2.5 million annually (testing costs to add math and reading as required by federal law and to meet test results reporting timelines required by federal law).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No state or local funding sources have been identified.

(7) Provide an assessment of whether an 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 NCLB federal funding as mentioned above is expected to cover the increased in cost necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board Of Education
Department of Education
(Amendment)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards
and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," September 2003 [June 2002], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation was written to assist local school districts in understanding how to include students with disabilities, students attending schools classified as A2 through A6, students with limited English proficiency, students receiving instruction in a home/hospital (homebound instruction) setting, and students who have temporary medical conditions that necessitate accommodations and/or modifications for participation in the state-required assessment and accountability programs.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the inclusion of students in special populations in the state-required assessment and accountability programs as required by KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq.,
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local school districts in how to include students in special populations in the state-required assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq. and the "No Child Left Behind Act of 2001", U.S.C. 6301 et seq.,

(2) If 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 reflects changes in the existing regulation as it relates to the inclusion of students with limited English proficiency in the state-required assessment and accountability programs as required by the "No Child Left Behind Act of 2001."
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for Kentucky to comply with federal legislation.
(c) How the amendment conforms to the content of the authorizing statute: This amendment requires that students with limited English proficiency be included in the state-required assessment program when they are enrolled in a Kentucky public school on the first day of the testing window and included in the state-required accountability program when they have been enrolled in the same school or district for a full academic year.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist local education agencies in the inclusion of students with limited English proficiency in the state-required assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: Local school districts and schools will have to ensure that all students with limited English proficiency who are enrolled in a Kentucky public school on the first day of the testing window be assessed and those who are enrolled in the same school or district for a full academic year are included in the state-required accountability program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There may be some additional costs to local education agencies to implement this administrative regulation due to the need to provide additional resources for necessary accommodations for students with limited English proficiency. There will be a slight increase in state costs associated with the production and scoring of assessments, as more students are included in the assessments. This results from federal requirements.
(b) On a continuing basis: There may be some additional costs to local education agencies to continue the implementation of this administrative regulation due to the need to continue to provide additional resources for necessary accommodations for students with limited English proficiency. There will be a slight increase in state costs associated with the production and scoring of assessments, as more students are included in the assessments. This results from federal requirements.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding must come from within existing state and federal funds already appropriated to the agency.

(7) Provide an assessment of whether an 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 federal NCLB assessment funds will be used to address the need.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.
EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Comment)

703 KAR 5:120. Assistance for schools; guidelines for scholastic audit.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.782, 158.805

STATUTORY AUTHORITY: KRS 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to adopt administrative regulations relating to assistance to improve teaching and learning for a school that has an index score that places it below the assistance line and relating to the guidelines for conducting scholastic audits. This administrative regulation establishes standards for assistance to schools and for conducting scholastic audits.

Section 1. Definitions. (1) "Assistance line" means the unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014. The calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is a horizontal line at eighty (80) minus one (1) standard error of measurement.

(2) "In-need-of-assistance" means the school's growth accountability index falls below its assistance point.

(3) "Level 1," means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(4) "Level 2," means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(5) "Level 3," means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(6) "Progressing," means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(7) "Sample of schools," means a representation of schools not to exceed five (5) percent, of those with an accountability index above the assistance line.

(8) "Scholastic audit," means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(9) "School classification," means the status of a school or school district, including "meets goal," "progressing," or "in need of assistance," based on measures of growth.

(10) "School improvement plan," means a data-driven and research-based framework developed by the school which contains specific recommendations from the educational improvement team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(11) "School portfolio," means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The school's consolidated plan;
(b) State assessment results;
(c) Student achievement data;
(d) Portfolio writing-analysis data;
(e) School survey data;
(f) The school report card;
(g) District technology inventory;
(h) School handbook and master schedule;
(i) School-based decision-making policies and meeting minutes;
(j) Teacher-lesson plans;
(k) District evaluation plans;
(l) Curriculum-alignment documents;
(m) Examples of student work; and
(n) A listing of professional development activities.

(12) "Standard error of measurement," means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(13) "Standards and indicators for school improvement," means the evaluation tool used in the scholastic improvement process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing consolidated school improvement plan.

Section 2. (1) A Level 1 school shall conduct a scholastic review and self-study facilitated by the district's professional development coordinator with assistance provided by Kentucky Department of Education (KDE) staff. The chairperson shall be appointed by the Commissioner of Education in consultation with the superintendent. The chairperson shall be responsible for:

(a) The notification of the school community that the review [audit] will take place and a process for written comments;
(b) The coordination of the site visitation;
(c) The facilitation of the process;
(d) The facilitation of a meeting with district staff prior to the review [audit] visit;
(e) The drafting of the report;
(f) The delivery of the final report to the local board school members, superintendent, principal and the school council members within three (3) weeks of completing the scholastic review.

(2) [Beginning with the results of the 2000-2002 accountability cycle] A Level 1 school may be eligible to receive Commonwealth school improvement funds. The school council shall decide whether to accept or decline Commonwealth school improvement funds. If the council chooses to decline, the principal shall notify the local board of education of the council's decision.

(3) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 1 scholastic review and self study team:

(a) Shall use the "Standards and indicators for School Improvement," to evaluate the school's learning environment, efficiency and academic performance;
(b) Shall make recommendations to improve teaching and learning for inclusion in the existing comprehensive [consolidated] school improvement plan; and
(c) May review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 3. [3.] (1) A Level 2 school shall receive a scholastic review facilitated and chaired by a designee of the Commissioner of Education with assistance from the district's central office staff. The chairperson shall be responsible for:

(a) The notification of the school community and a process for written comments;
(b) The coordination of the site visitation;
(c) The facilitation of the process;
(d) The facilitation of a meeting with district staff prior to the audit visit;
(e) The drafting of the report;
(f) The delivery of the final report to the local school board members, superintendent, principal and the school council members within three (3) weeks of completing the scholastic review; and
(2) [Beginning with the results of the 2000-2002 accountability cycle] A Level 2 school may be eligible to receive Commonwealth school improvement funds. The school council shall decide
whether to accept or decline Commonwealth school improvement funds. If the council chooses to decline, the principal shall notify the local board of education of the council's decision.

(3) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 2 scholastic review shall:
(a) Use the "Standards and Indicators for School Improvement" to evaluate the school's learning environment, efficiency, and academic performance;
(b) Make recommendations to improve teaching and learning for inclusion in the existing comprehensive [consolidated] school improvement plan; and
(c) Review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 3, [4.] A Level 3 school shall receive education assistance from a highly skilled educator under KRS 158.782 and a scholastic audit. A Level 3 school shall be eligible to receive Commonwealth school improvement funds under KRS 158.805. In order for a Level 3 school to be eligible to receive Commonwealth school improvement funds, the approval of the school council shall be required and the local board of education shall be notified of the decision.

Section 4, [6.] Evaluation of school personnel in a Level 3 school shall address the following:
(1) The district's evaluation plan and process for certificated staff shall be reviewed and recommendations made on the implementation of the evaluation plan and process used by the school;
(2) A person responsible for evaluating certificated personnel, including the certificated members of the audit team, shall have fulfilled the training requirements as described in KRS 156.101 and 704 KAR 3:345;
(3) Beginning with the school year 2002-2003, the qualified members of the audit team shall submit written recommendations for additional staff evaluations to be conducted by the certified administrator charged with evaluation. If additional evaluations are required, the certified administrator charged with evaluation, in collaboration with the assigned highly skilled educator, shall submit a progress report to the district and the KDE within six (6) months of the date of the report. Based on the findings, under KRS 156.132, the Commissioner of Education may recommend to the local superintendent that:
(a) The principal, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan as identified in 704 KAR 3:345, be dismissed, demoted, or transferred; and
(b) A teacher, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan, be dismissed or transferred.

Section 5, [6.] (1) If a school is classified as a Level 3 school for two (2) consecutive biennia, a student attending the Level 3 school may transfer to a school with an accountability index above its assistance line within the district or if none is available, a school with an accountability index above its assistance line outside the district. No later than thirty (30) days before the start of the next school year the student shall submit the transfer request to the superintendent.

(2) The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district with the student transfer to be effective beginning with the next school year after the school is classified as a Level 3 school for two (2) consecutive biennia. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Commissioner of Education to resolve the issue and make a decision on the placement of the student.

(3) The school district in which the student is enrolled shall retain the SEEK funding, and the student's resident district shall be responsible for all transportation costs incurred as a result of a student transferring.

Section 6, [2.] If a school is classified as Level 3, a scholastic audit team may request the Commissioner of Education to recommend to a local board of education the removal of a school council member under KRS 160.347.

Section 7, [8.] (1) Members of the scholastic audit team shall be selected and trained from a pool of candidates who have submitted an application to the Department of Education (KDE). The training shall include:
(a) Developing, implementing, and evaluating a comprehensive consolidated school improvement plan that communicates a clear purpose, direction and action plan focused on improved teaching and learning;
(b) Building capacity for school leadership at all levels that promotes instructional decisions resulting in active support for teaching and learning and sustained continuous improvement;
(c) Organizing the school to maximize use of all available resources to support high student and staff performance within a safe environment;
(d) Using time efficiently and effectively to maximize teaching and learning;
(e) Providing and supporting research-based, results driven professional development opportunities for all staff to improve staff and student learning;
(f) Building collaborative partnerships, open communication, and active engagement of all stakeholders;
(g) Attending to the evidence as to whether the individual needs of students are being met and assessing equitable access to the entire curriculum;
(h) Using resources effectively to eliminate barriers to learning and providing the appropriate support structures to meet the needs of all students;
(i) Using technology and other resources as an integral part of an effective, educational program to improve teaching and learning;
(j) Developing and learning how to assess an effective learning community;
(k) Developing and implementing an effective, responsive curriculum that is rigorous, intentional, articulated, and aligned to state standards established under KRS 158.845, 158.6451, and 703 KAR 4:050;
(l) Providing and learning how to assess an instructional program that actively engages all students by employing varied research-based practices to improve academic performance;
(m) Developing and learning to utilize multiple evaluation and assessment strategies to monitor and modify instruction;
(n) Conducting professional growth and evaluation of certified personnel;
(o) Assessing and advising compliance with Kentucky's statutory and regulatory requirements for schools and school districts; [and]
(p) Understanding and assessing the fiscal relationship between schools and districts with respect to resource allocation and integration; and
(q) Understanding strategies for achievement gap reduction.

(2) The scholastic audit team shall consist of the following members:
(a) A highly skilled educator selected under KRS 158.782;
(b) An active or retired teacher who has not been under full-time contract in the district in which the school is being audited;
(c) An active or retired principal or other school-level administrator who has not been under full-time contract in the district in which the school is being audited;
(d) An active or retired district level administrator who has not been under full-time contract in the district in which the school is being audited;
(e) A parent or legal guardian who has or has had a school-aged child and resides outside the district which includes the school being audited; and
An active or retired university faculty member.

(3) The Commissioner of Education or his designee shall name a highly skilled educator with administrative certification and experience, an experienced certified administrator member of the audit team, or a similarly qualified state-designated agent to serve as chairperson of the scholastic audit team. The chairperson shall be responsible for:
(a) The notification of the school community and a process for written comments;
(b) The coordination of the site visitation;
(c) The facilitation of the process;
(d) The facilitation of a meeting with district staff prior to the audit visit;
(e) The drafting of the report; and
(f) The delivery of the final report to the KDE, local school board members, superintendent, principal and the school council members.

(4) Prior to the scholastic audit, the school principal, in collaboration with the other members of the school council, shall prepare a school profile, a use in creating a profile of the strengths and limitations of the school's instructional and organizational effectiveness. Evidence as to the current levels of instructional and organizational effectiveness shall be indicated in the identification of priorities for school improvement in the comprehensive school improvement [consolidated] plan.

(5) A school's learning environment, efficiency, and student academic performance shall be evaluated by using the scholastic audit team using "Standards and Indicators For School Improvement".

(6) The scholastic audit team shall:
(a) Make recommendations for assistance;
(b) Share a draft report with the school faculty and school council members prior to the scholastic audit team's departure; and
(c) Submit a final exit report, within three (3) weeks following the site visit, to the KDE, local school board members, superintendent, principal, and the school council members, regarding:
1. The appropriateness of the classification based upon audit findings;
2. Specific recommendations to improve teaching and learning for inclusion into the existing comprehensive [consolidated] school improvement plan;
3. The evaluation of school-based decision-making council decisions in the critical instructional areas under KRS 160.345(2)(d)(i) and (3)(c);
4. The evaluation of the effectiveness of the principal as the instructional leader, in the areas of efficiency, learning environment, and academic performance;
5. The identification of certified staff, including administrators, needing further performance evaluations to the primary evaluator as defined in KRS 156.101(6)(c);
6. The assistance and resources required to revise the consolidated school improvement plan; and
7. The identification of priorities and strategies, which the school or district may adopt to support the improvement effort.

(7) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the audit team. The audit findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(8) School improvement plans shall be based upon:
(a) Recommendations from the audit team's exit report for improving teaching and learning that shall be incorporated into the existing comprehensive school improvement [consolidated] plan submitted to the district and the KDE; and
(b) Specific, research-based standards and indicators of quality as found in "Standards and Indicators for School Improvement" so all school and district consolidated plans are linked to the critical elements of the scholastic audit process and focused on improving student academic performance.

(9) The process for amending a school plan shall be a local decision, beginning with the approval by the school council.

(10) An amendment to a school plan shall be shared at the district level so district personnel can determine if the amendment results in a need for reallocation of discretionary resources and an adjustment or formal amendment to the district plan.

Section 8. (9.) (1) A principal of a school classified as a Level 3 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 3 school. The professional development activities shall be designed and delivered by the KDE and the local district in accordance with KRS 156.101.

(2) A principal of a school classified as a Level 1 or Level 2 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 1 or Level 2 school. The professional development activities shall be designed and delivered by the KDE or the local district in accordance with KRS 156.101.

Section 9. (10.) The KDE shall conduct scholastic audits in a random sample of schools.


This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for assistance to schools and

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for conducting scholastic audits.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is required by KRS 158.6455(4)(a).
(c) How this administrative regulation conforms to the content
of the authorizing statute: This administrative regulation estab-
ishes criteria for scholastic audit team members, criteria for school
reviews, and for making recommendations.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regula-
tion will continue to provide clarity to the scholastic audit process.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative regu-
lation: The definitions were deleted and placed in the defini-
tional regulation, 703 KAR 5:001.
(b) The necessity of the amendment to this administrative regu-
lation: To move the definitions to 703 KAR 5:001.
(c) How the amendment conforms to the content of the
authorizing statute: The regulation still implements KRS
158.6455(4)(a) as required.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment allows for all assessment and
accountability definitions in 703 KAR Chapter 5 to be in one regu-
lation, 703 KAR 5:001.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Local school districts and the Department of
Education.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative regu-
lation, if new, or by the change if it is an amendment: School
staff will be provided with the amended regulation, but the impact
of the amendment is no different than the original regulation.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There is no fiscal impact resulting from the
amendment.
(b) On a continuing basis: There is no fiscal impact resulting
from the amendment.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
amendment does not require additional funding.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: Not applicable.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No
TIERING: Tiering was not appropriate in this administrative regulation because the regulation applies
equally to all schools.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
(Amendment)
703 KAR 5:130. School district accountability.
RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 158.070, 158.645
NECESSITY, FUNCTION, AND CONFORMITY: KRS
158.6455 authorizes the Kentucky Board of Education to promul-
gate an administrative regulation establishing a local school district
accountability program. This administrative regulation establishes
eligibility for district rewards, and it establishes procedures for de-
termining assistance and other consequences for local school
districts having schools in need of assistance as defined in 703
KAR 5:020.

Section 1. Required Participation in the National Assessment of
Educational Progress. If a district is selected by the U.S. De-
partment of Education or its designated contractors to participate in
the state National Assessment of Educational Progress in reading,
mathematics, and science at grades 4 and 8, the district shall par-
ticipate fully. [Definitions. (1) "District evaluation team" means one
or more scholastic audit teams as established in 703 KAR
5:120.
(2) "Level 3" means a classification assigned to a school that
has an index score that places it in the lowest one-third (1/3) of all
schools below the assistance line.]
Section 2. (1) Dropout data generated at an A2-A6 school shall
be attributed to the school district in which the A2-A6 school is
located, unless the district exercises the option in subsection (2) of
this section.
(2) If a district where an A2-A6 school is located can identify
the A1 school which would have served the student if the student
had not required services offered by the A2-A6 school, then the
dropout data regarding that student shall be assigned to the A1
school. If a school district exercises this option, the district shall
accurately report specific student dropout data to the district con-
taining the accountable A1 school to be included in the nonaca-
demic data reported the Department of Education. If, after reason-
able effort, the district cannot determine the proper A1 school of
accountability, the district may request that the Kentucky Depart-
ment of Education assign the data to the proper district [or regional
data].
Section 3. A local school district in which all schools are classi-
ﬁed as progressing or meets goal under 703 KAR 5:020 and meets
the other criteria established for schools in order to earn rewards
in 703 KAR 5:020 shall be declared an exemplary growth district
and shall receive rewards as determined by the Kentucky Board of
Education.
Section 4. A district meeting adequate yearly progress in both
reading and mathematics for two (2) consecutive years shall re-
ceive a reward or recognition as determined on an annual basis by
the Department of Education.
Section 5. (1) A local school district shall be held accountable
for providing its schools appropriate instructional leadership and
instructional support.
(2) A local school district containing a school that is clas-
siﬁed as Level 3 that was not classiﬁed as Level 3 the previous ac-
countability cycle shall modify its district consolidated plan by including a
speciﬁc support plan designed to assist each Level 3 school in
improving its academic achievement. The plan shall address each of
the areas listed in Section 5 of this administrative regulation and
shall be sent to the local board of education members and to the
Level 3 school council members or, if none exists, the principal, for
approval.
(3) If a school is classiﬁed as Level 3 for two (2) or more con-
secutive accountability cycles, the school district shall be subject to
a district audit conducted by a district evaluation team. The team
shall review each of the areas outlined in Section 5 of this adminis-
trative regulation and the district’s implementation of the previous
accountability cycle’s school support plan. The district audit team
shall also evaluate the district as to district responsibilities using
"Standards and Indicators for School Improvement", which is incor-
porated by reference in 703 KAR 5:120.

Section 6. (8) A local school district shall address the following
areas in its school support plan:
(1) Instructional leadership shall include evidence that the local
school district provides:
(a) Instructional staff access to curriculum-related materials
and training necessary to use curricular and data resources relat-
ing to the goals for Kentucky public schools established in KRS
158.645 and 158.6451 and the academic expectations established
in 703 KAR 4:060 and the school’s performance trends, which
include state assessment data and other student achievement
performance measures identified by the district;
(b) A professional development planning process that results in
training activities provided for the certified staff within the goals
established in KRS 158.6451 and the local needs assessment
required in 704 KAR 3:035, annual professional development plan.
The district shall include evidence that it equitably and effectively
distributes professional development resources and has designed a district professional development program based on student achievement data; and

(c) A structure for instructional improvement including evidence that the local school district is actively supporting a systematic, school improvement planning process involving appropriate stakeholder groups, including parents, business representatives, and the general public, and the district is using all available and appropriate data;

(2) Financial services and support shall include evidence that district resources have been distributed to each school equitably and consistently in accordance with the requirements of 702 KAR 3:246. School council allocation formula. The district shall also demonstrate that decisions about discretionary funds and other available resources not included in the school allocation formula are directed by an assessment of need or a required plan, all of which are data driven;

(3) Safe and secure instructional facilities shall include evidence of adequate and equitable maintenance of facilities. In addition, safe and secure instructional facilities shall include evidence that the school district has reviewed and assisted in the implementation of the school-based safety plans dealing directly with issues related to discipline and a safe school environment; and

(4) An effective certified employee evaluation program shall include evidence that the evaluation of the principal and certified staff has been implemented in a regular and timely manner consistent with the district's approved evaluation plan submitted under KRS 156.101 and that the evaluation process focuses on improving instruction.

Section 7. [6.] The district evaluation team shall submit a report, including its recommendations, to the Commissioner of Education, the district superintendent, and the local board of education within two (2) weeks of its review. The report shall be presented by a member of the district evaluation team at a local board of education meeting with opportunity for public comment. The district evaluation team recommendations may include the following:

(1) No additional action is needed because the district is effectively implementing its school support plan which reflects strategies to meet the needs of the Level 3 school;

(2) Revisions to the school support plan are needed even though the district has effectively implemented its plan;

(3) Revisions in implementation procedures are needed as implementation of the school support plan is not effective; or

(4) A management audit as provided in KRS 158.785 and 703 KAR 3:205 is needed because the district has not effectively developed or implemented its school support plan.

Section 8. District Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a district has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) as described in 703 KAR 5:020.

(2) For purposes of determining adequate yearly progress, a local district shall be held accountable based on an aggregated average of the performance of elementary, middle, and high school students who have been enrolled in the district for a full academic year and producing district level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;
(b) Accountability indices;
(c) Graduation rates; and
(d) Participation rates.

(3) These statistics shall be used to determine if a district has met adequate yearly progress as measured against the annual measurable objectives established in 703 KAR 5:020, Section 10(11).

(4) Meeting adequate yearly progress. A district shall be determined to have made adequate yearly progress for a school year if:

(a) The district and all subpopulations of sufficient size met the annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5:001;
(b) The district showed progress or met the criteria on the accountability index at the elementary and middle school accountability levels as defined in 703 KAR 5:001;
(c) The district demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5:001; and
(d) Had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size.

(5) No child left behind (NCLB) improvement district determination. A district shall be identified as a "NCLB improvement district" if for two (2) consecutive years the district fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 - reading or mathematics.

(6) Confidence intervals. A district shall be considered to have met the annual measurable objective in reading or mathematics if:

(a) The percent of students proficient or above in a district meets or exceeds the annual measurable objective in reading or mathematics;

(b) The annual measurable objective fails within the ninety-nine (99) percent confidence interval placed around the district's percent of students proficient and above.

(7) Students included in the participation rates. A student enrolled in Kentucky public school district on the first day of the testing window at each accountability level shall be included in the calculations of the district's accountability rate calculated for the total population and for each subpopulation of sufficient size.

(8) Students included in determining whether a district meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a district for a full academic year shall be included in the district calculations of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(9) Annual measurable objectives in reading and mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be those established in 703 KAR 5:020, Section 10(11).

(10) Initial consequences for NCLB improvement districts. If a district is identified as a NCLB improvement district, the district:

(a) Shall, not later than three (3) months after being identified, develop or revise a district improvement plan. The district shall implement the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified as a NCLB improvement district;

(b) May request technical assistance from the Kentucky Department of Education; and

(c) May be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

(11) Subsequent consequences for NCLB improvement districts. If a district is identified as a NCLB improvement district and fails to make adequate yearly progress by the end of the second full school year after the identification, the district shall be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

(12) Duration of consequences. If a district identified as a NCLB improvement district makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after identification, the district shall no longer be identified as a NCLB improvement district and the district shall not be subject to federal consequences.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chaiperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.
Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 6:020. In addition, this administrative regulation establishes the school district accountability standards necessary to conform to federal assessment and accountability requirements established in the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics of how Kentucky public school districts will be held accountable in the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all school districts.

(2) If 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 provides specifics on how Kentucky will become compliant with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of local school districts in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability program.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to local school districts specifics for the implementation of the requirements of the state-wide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: Local school district staff will be provided the specifics for implementing the state-required assessment and accountability programs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional costs to the agency to continue the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all local school districts.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Hospitals and Outpatient Facilities Services

Amendment

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.555, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250 to 447.280, 42 U.S.C. 1396(f), x(min), 1396a, 1396b, 1396d, 1396e-4


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 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 the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide an acute care hospital service in accordance with 902 KAR 20:016.

(2) "Arithmetic mean" means the sum of all values in a set of values divided by the number of values.

(3) "Base rate" means the per discharge rate for operating and capital-related components for an acute care hospital.

(4) "Base year" means the cost reporting period upon which a rate is based.

(5) "Budget neutrality" means that reimbursements resulting from rates paid to providers under a per discharge or per diem methodology do not exceed payments in the prior year adjusted for inflation based on the CMS Input Price Index, changes in patient utilization.

(6) "Budget neutrality factor" means a factor that is applied to a relative weight per diem rate or the direct graduate medical education payment so that budget neutrality is achieved.

(7) (a3) "Capitation costs" means capitation related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(8) "CMS" means Centers for Medicare and Medicaid Services.

(9) "CMS Input Price Index" means the wage index published by CMS in the Federal Register.
(10) "Cost basis" means relating to the allowable Medicaid inpatient costs incurred by a provider in a base year. Medicaid inpatient costs are the sum of routine Medicaid costs determined by applying each hospital’s routine per diem amount to the allowed patient days in the base year and ancillary Medicaid costs determined by applying ancillary costs-to-charge ratios derived from the provider’s cost reports to ancillary charges for that hospital’s Medicaid claims with dates of service in the base year.

(11) "Cost outlier" is a claim which has an operating cost which is $23,000 greater than a Medicare DRG outlier threshold.

(12) [46] "Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.

(13) [73] "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(14) [80] "Department" means the Department for Medicaid Services or its designated agent.

(15) "Diagnostic related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources, as defined by Medicare.

(16) [90] "Disproportionate share hospital" or "DSH" means a hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 U.S.C. 1396d-4(d).

(17) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25.

(18) [490] "DRI" means Data Resources, Incorporated.

(19) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(20) "Fixed loss cost threshold" means the amount combined with the full DRG payment for each DRG to determine the outlier threshold.

(21) [41] "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(2)(A).

(22) [48] "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(23) [43] "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:

(a) To an individual who:

1. Determined to be indigent in accordance with KRS 205.640; and

2. Not a Medicaid recipient; and

(b) For which an individual shall not be billed by the hospital.

(24) [41] "Indigent care eligibility criteria" means the criteria as specified in Section 25 [49] of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.

(25) [46] "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(26) "Intrahospital transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.

(27) "Level II neonatal center" means a facility that provides specialty care for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant’s body temperature, and feeding assistance.

(28) "Level III neonatal center" means a facility which provides specialty care of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

(29) "Long-term acute care hospital" or "LTAC" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).
Louisville; and

2. That does not possess only a residency program or rotation agreement.

(a) Trending factor” means the inflation factor as applied to that period of time between a facility’s base fiscal year end and the beginning of the universal rate year.

(b) “Type I hospital” means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(c) “Type II hospital” means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV hospital.

(d) “Type III hospital” means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(e) “Type IV hospital” means an in-state disproportionate share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(f) “Universal rate year” means the twelve (12) month period under the prospective payment system, beginning July of each universal rate year for which a payment rate is established for a hospital regardless of the hospital’s fiscal year end.

(g) “Upper payment limit” means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on the following:

(a) Utilization;
(b) Peer grouping; and
(c) Age of patient.

(h) “Urban trauma center hospital” means an acute hospital that:

(i) Is designated as a Level I Trauma Center by the American College of Surgeons;

(j) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(k) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

(l) “Weighted median” means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Reimbursement for an Inpatient Hospital Service.

The department shall reimburse for an inpatient hospital service provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 U.S.C. 1396a(a)(13).

(1) Excluding critical access hospitals, reimbursement for an inpatient hospital service shall be prospective.

Section 3. Payment for an Inpatient Acute Care Service in an Acute Care Hospital.

1. An acute care hospital shall be paid for an inpatient acute care service on a fully prospective per discharge basis for the universal rate year beginning on or after April 1, 2003.

2. For an inpatient acute care service in an acute care hospital, the total per discharge payment shall be the sum of:

(a) An operating payment amount;

(b) A capital-related payment amount; and

(c) If applicable, a cost outlier payment amount.

3. An operating payment amount shall be based on a patient’s DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The operating payment amount shall be calculated for each discharge by multiplying a hospital’s operating base rate by the Medicare-specific DRG relative weight.

4. The operating base rate for each hospital shall be the Medicare national standardized amount as adjusted by Medicare for each hospital using the Medicare wage index and Medicare indirect medical education operating adjustment factor.

(a) The Medicare DSH operating adjustment factor shall be excluded from the calculation of the operating base rate for each hospital.

(b) The adjusted Medicare national standardized amount shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payments effective on October 1 of the year immediately preceding the universal rate year.

(c) Data not specifically available in the Federal Register shall be obtained from each hospital’s Medicare fiscal intermediary.

(d) A capital-related payment amount shall be based on a patient’s DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The capital payment amount shall be calculated for each discharge by multiplying a hospital’s capital-related base rate by the Medicare-specific DRG relative weight.

(e) The capital-related base rate for each hospital shall be the Medicare federal capital rate, as adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor if applicable, the Medicare geographic adjustment factor, and the Medicare indirect medical education capital adjustment factor published in the Federal Register.

(f) The Medicare DSH capital adjustment factor shall be excluded from the calculation of the capital-related base rate for each hospital.

(g) For each universal rate year beginning July 1, 2004, the adjusted Medicare federal capital rate shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payments effective on October 1 of the year immediately preceding the universal rate year.

(h) Data not specifically available in the Federal Register shall be obtained from each hospital’s Medicare fiscal intermediary.

(i) An additional cost outlier payment shall be made for an approved discharge meeting the Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.

(j) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG’s outlier threshold.

(k) The estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be calculated by multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the discharge-allowed charges.

(l) The Medicare operating and capital-related cost-to-charge ratios shall be those used by Medicare published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(m) An outlier threshold shall be calculated as the sum of the discharge’s operating payment amount, capital-related payment amount, and the fixed loss cost threshold.

(n) Payment for a cost outlier shall be eighty (80) percent of the amount that estimated costs exceed the discharge’s outlier threshold.

(o) Kentucky Medicaid-specific DRG relative weights shall be calculated using all applicable Medicaid discharges from the hospital’s base year claims data and determined as follows:

1. Psychiatric claims from all hospitals, identified as those claims from acute care hospitals with psychiatric diagnoses;

2. All claims from psychiatric hospitals;

3. All claims from rehabilitation hospitals;

4. All claims from critical access hospitals; and

5. All claims from long-term acute care hospitals.

(p) Claims for transplant services as specified in subsection (13) of this section shall be removed.

(q) Claims for patients discharged from out-of-state hospitals shall be removed.

(r) Allowed days for the remaining discharges shall be identified.

(s) A unique set of DRGs and relative weights shall be established for a facility identified by the department as qualifying as a Level III neonatal center.

1. A claim classified into DRGs 385 through 390 for a qualify-
ing hospital where care is provided in a neonatal intensive care united shall be identified and reassigned to DRGs 685 through 690,
respectively.

2. Only a qualifying hospital shall be eligible for payment using
DRGs 685 through 690.

(c) A statewide Medicaid arithmetic mean length-of-stay per
diagnosis shall be determined for each DRG classification.

(b) Relative weights shall be calculated for each DRG by multi-
plying the Medicare relative weight by the ratio of the
Medicaid arithmetic mean length-of-stay to the Medicare arithmetic
mean length-of-stay, multiplied by the budget neutrality factor.

(i) For purposes of calculating the DRG relative weights in
paragraph (b) of this subsection, Medicare DRG relative weights
and arithmetic mean length-of-stay shall be those published in the
Federal Register effective on October 1 of the year immediately
preceding the universal rate year.

(3) An indirect medical education adjustment factor shall be the
same indirect medical education factor used by Medicare for Medi-
care rates effective on October 1 of the year immediately preced-
ing the universal rate year.

(a) An indirect medical education operating adjustment factor
shall be the same used by Medicare, based on the published
Medicare formula. The ratio of intern and residents to available
beds used in the Medicare formula shall be obtained from each
hospital's Medicare fiscal intermediary.

(b) An indirect medical education capital adjustment factor
shall be the same used by Medicare, based on the published
Medicare formula. The ratio of intern and residents to average daily
census used in the Medicare formula shall be obtained from each
hospital's Medicare fiscal intermediary.

(10) If a patient is transferred to or from another hospital,
the department shall make a transfer payment to the transferring hos-
pital if the initial admission and the transfer are determined to be
medically necessary.

(a) For a service reimbursed on a prospective discharge basis,
the transfer payment amount shall be calculated based on the
average daily rate of the transferring hospital's payment for each
covered day the patient remains in that hospital, plus one (1) day,
up to 100 percent of the allowable per discharge reimbursement
amount.

1. An average daily rate shall be calculated by dividing the
allowable per discharge reimbursement amount, based on a
patient's DRG classification, by the statewide Medicaid average
length-of-stay for a patient's DRG classification.

2. An allowable per discharge reimbursement amount, based
on a patient's DRG classification, shall be the sum of the operating
payment amount and the capital-related payment amount.

3. Total reimbursement to the transferring hospital shall be the
transfer payment amount and, if applicable, a cost outlier payment
amount.

(b) For a hospital receiving a transferred patient, reimburse-
ment shall be the allowable per discharge reimbursement amount,
based on the patient's DRG classification, and, if applicable, a cost
outlier payment amount.

(11) A transfer from an acute care hospital to a qualifying
postacute care facility for selected DRGs in accordance with para-
graph (b) of this subsection will be treated as a postacute care
transfer.

(a) The following shall qualify as a postacute care setting:

1. A psychiatric, rehabilitation, children's, long-term, or cancer
hospital.

2. A skilled nursing facility or

3. A home health agency.

(b) The following DRGs shall be eligible for the postacute care
transfer payment:

1. DRG 14, Specific cerebrovascular disorders except transient
ischemic attack;

2. DRG 113, Amputation for circulatory system disorders ex-
cept upper limb and toe;

3. DRG 208, Major joint limb reattachment procedures of lower
extremity;

4. DRG 210, Hip and femur procedures except major joint
procedures age > seventeen (17) with CC;

5. DRG 211, Hip and femur procedures except major joint
procedures age > seventeen (17) without CC;

6. DRG 236, Fractures of hip and pelvis;

7. DRG 263, Skin graft and debridement for skin ulcer or cellul-
itis with CC;

8. DRG 264, Skin graft and debridement for skin ulcer or cellul-
itis without CC;

9. DRG 429, Organic disturbances and mental retardation; and
10. DRG 483, Tracheostomy except for face, mouth and neck
diagnoses.

(c) Each transferring hospital shall be paid a per diem rate for
each day of stay.

1. No payments shall exceed the full DRG payment that would
have been made if the patient had been discharged without being
transferred.

2. DRGs 209, 210, and 211 shall receive fifty (50) percent of
the full DRG payment plus the per diem for the first day of the
stay and fifty (50) percent of the per diem for the remaining days of
the stay, up to the full DRG payment.

3. The remaining DRGs as referenced in paragraph (a) of this
subsection shall receive twice the per diem rate the first day and
the per diem rate for each following day of the stay prior to the
transfer.

(d) The per diem amount shall be the full DRG payment al-
lowed divided by the statewide Medicaid average length of stay for
that DRG.

(12) Effective February 1, 2004, an intrahospital transfer to or
from an acute care bed to or from a rehabilitation or psychiatric
district unit shall be reimbursed:

(a) The full DRG payment allowed; and

(b) The facility-specific distinct part unit per diem rate for each
day the patient remains in the distinct part unit.

(13) A kidney, cornea, pancreas, or kidney and pancreas
transplant shall be reimbursed on a prospective per discharge
method according to the patient's DRG classification. All other
transplants shall be reimbursed in accordance with 907 KAR
1:350.

(14) Payment for a federally-defined hospital swing bed shall
be made in accordance with 907 KAR 1:065.

Section 4. Preadmission Services for an Inpatient Acute Care
Service. A preadmission service provided within three (3) calendar
days immediately preceding an inpatient admission reimbursable
under the prospective per discharge reimbursement methodology
shall:

1. Be included with the related inpatient billing and shall not
be billed separately as an outpatient service.

A. A preadmission service furnished by a home health agency,
a skilled nursing facility and hospice, unless it is a diagnostic service
related to an inpatient admission and an outpatient maintenance
diagnosis service.

Section 5. Payment for Direct Graduate Medical Education Costs
at Hospitals with Medicare-approved Graduate Medical Educ-
ation Programs. (1) The department shall reimburse for the direct
costs of a graduate medical education program approved by Medi-
care.

(2) A payment shall be made separately from the per discharge
and per diem payment methodologies and shall be made on an
annual basis.

(3) An annual payment amount shall be determined for each
hospital as follows:

(a) The hospital-specific and national average Medicare per
intern and resident amount effective for Medicare payments on
October 1 immediately preceding the universal rate year are ob-
tained from each approved hospital's Medicare fiscal intermediary.

(b) The higher of the average of the Medicare hospital-specific
per intern and resident amount or the Medicare national average
amount shall be selected.

(c) The selected per intern and resident amount shall be multi-
plied by the hospital's number of interns and residents used in the
calculation of the indirect medical education operating adjustment
factor. The resulting amount is an estimate of total approved direct
graduate medical education costs.

(d) The estimated total approved direct graduate medical edu-
cation costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized Medicaid cost report on Worksheet D, Part 1, to determine an average approved graduate medical education cost per day amount.

(e) The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program.

(f) Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 6. Payment for Rehabilitation Services in an Acute Care Hospital. (1) Effective February 1, 2004, a rehabilitation service in an acute care hospital that has a Medicare-designated rehabilitation distinct part unit shall be reimbursed on a per diem basis.

(2) A rehabilitation per diem rate shall be a facility-specific rate based on the most recently received cost report and in accordance with Sections 11 and 12 of this administrative regulation.

(3) A rehabilitation service provided in a hospital that does not have a Medicare-designated distinct part unit shall be reimbursed the median of rehabilitation services provided in all acute care hospitals.

Section 7. Payment for an Inpatient Psychiatric Service in an Acute Care Hospital. (1) Effective February 1, 2004, an inpatient psychiatric service provided in an acute care hospital that has a Medicare-designated psychiatric distinct part unit shall be reimbursed on a per diem basis.

(2) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital's psychiatric per diem rate by the number of allowed patient days.

(a) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

(b) The psychiatric operating cost-per-day amount used to determine the psychiatric operating per diem rate shall be calculated for each hospital by dividing its Medicaid psychiatric cost basis, excluding capital costs and medical education costs, by the number of Medicaid psychiatric patient days in the base year.

(c) The Medicaid psychiatric cost basis and patient days shall be based on patient claims for patients with a psychiatric diagnosis with dates of service in the base year. The psychiatric operating per diem rate shall be adjusted for:

1. The price level increase from the midpoint of the base year to the midpoint of the universal base year using the CMS Input Price Index; and

2. The change in the Medicare published wage index from the base year to the universal base year.

(d) A psychiatric capital per diem rate shall be facility-specific and shall be calculated for each hospital by dividing its Medicaid psychiatric capital cost basis by the number of Medicaid psychiatric patient days in the base year. The Medicaid psychiatric cost basis and patient days shall be based on Medicaid claims for patients with psychiatric diagnoses with dates of service in the base year. The psychiatric capital per diem rate shall be adjusted as described in Section 10 of this administrative regulation.

(e) For psychiatric services in an acute care hospital that does not have a Medicare designated distinct part unit, the psychiatric per diem rate shall be the median rate for all psychiatric services in an acute care hospital.

(f) Payment for an inpatient service provided to a child under age six (6) years shall be in accordance with Section 11(5) of this administrative regulation.

Section 8. Hospital’s Wage Index and Wage Area. (1) A hospital’s wage index, used to adjust per diem reimbursement rates established pursuant to Section 7 of this administrative regulation, shall be the wage index published by CMS in the Federal Register on October 1 immediately preceding the universal base rate year.

(2) For the purpose of applying a wage index, the department shall assign a hospital to:

(a) The wage area in which it is physically located as originally classified by CMS for the Medicare Program for the base year; or

(b) The wage area to which a hospital has been reclassified by the Medicare Geographic Classification Review Board for the base year.

(3) The department shall not consider reclassification of a hospital to a new wage area except during a rebase period.

Section 9. Budget Neutrality Factors. (1) When rates are rebased, estimated projected reimbursement in the universal rate year for hospitals as described in Sections 3 and 11 of this administrative regulation shall not exceed payments for the same services in the prior year adjusted for inflation using the CMS Input Price Index, and adjusted for changes in patient utilization.

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated for base year claims. Amounts shall be adjusted for changes in inflation using the CMS Input Price Index and patient utilization.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated for base year claims.

(a) If the sum of all the acute care hospitals’ estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals’ adjusted estimated payments under the prior year’s reimbursement methodology, the following universal rate year reimbursement components shall be adjusted and shall result in estimated payments that are budget neutral:

1. DRG relative weights; and

2. Periodic direct graduate medical education payment amounts.

Section 10. Reimbursement Updating Procedures. (1) The department shall rebase per diem rates, per diem rates, DRG relative weights, and the following applicable components of the payment rates no less frequently than every three (3) years using the most recent audited cost report and Medicare rate data available to the department:

(a) Operating rates;

(b) Capital-related rates;

(c) Medical education costs;

(d) Cost-to-charge ratios;

(e) DRG relative weights; and

(f) Outlier thresholds.

(2) Beginning July 1, 2004, the department shall adjust rates annually on July 1 using the Medicare DRG base rate in effect October 1 of the preceding year as published in the Federal Register and confirmed with each hospital's fiscal intermediary.

(3) The department shall adjust per diem rates annually according to the following:

(a) An operating per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the CMS Input Price Index; and

(b) A capital cost per diem rate shall not be adjusted.

(4) Except for an appeal in accordance with Section 29 of this administrative regulation, no other adjustment shall be made.

Section 11. Payment for Rehabilitation Hospital, Long-Term Acute Care Hospital, and Psychiatric Hospitals. (1) Effective April 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a rehabilitation hospital, LTAC hospital, or psychiatric hospital shall continue to be reimbursed at the per diem rate based on the 1999 cost report which was in effect for the rate year beginning July 1, 2002.

(2) Effective November 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a psychiatric hospital previously designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children shall be reimbursed at the per diem rate as established in subsection (1) of this section.

(3) An inpatient service provided to an eligible Medicaid recipient shall be reimbursed by multiplying the hospital's per diem rate by the number of patient days.

(4) A newly-participating rehabilitation hospital or LTAC shall be paid in accordance with Section 12 of this administrative regu-
A psychiatric hospital shall:
   (a) Except as provided in paragraph (b) of this subsection, have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in its area;
   (b) If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in its area;
   (c) For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) in a non-disproportionate share hospital, the following shall apply:
       (a) For the first thirty (30) days of inpatient service reimbursed on a per diem basis, payment shall be in accordance with Sections 3, 7, 13, and 21 of this administrative regulation; and
       (b) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply:
           1. To an inpatient service determined by the department to be medically necessary;
              a. Thirty (30) days after the date of admission of a child; or
              b. For a newborn, thirty (30) days from the date of discharge of the mother; and
           2. Without regard to length of stay or number of admissions.

Section 12. Payment to a Newly-participating Rehabilitation Hospital or LTAC. (1) A newly-participating rehabilitation hospital or LTAC shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.
   (2) A prospective rate shall be set based on the data referenced in subsection (1) of this section, not to exceed the upper limit for the class.
   (3) A prospective rate shall be tentative and subject to settlement at the time the first audited fiscal year and cost report is available to the department.
   (4) When a cost report is received and reviewed, a rate shall be set for the rehabilitation hospital or LTAC which shall be adjusted back by DRI to 1997 cost report data and trended forward for two (2) years for inflation by a rate of three (3) percent for the first year and two and eight-tenths (2.8) percent for the second year. (Acute Care Hospital and Rehabilitation Hospital-Inpatient Services. 1) The reimbursement rate for an acute-care hospital or for a rehabilitation hospital for the rate year beginning July 2000 shall be determined by utilizing a rate-on-rate methodology as follows:
       (a) The department shall utilize a hospital's June 30, 2000, per diem rate that includes operating, professional, and capital cost components;
       (b) The per diem rate shall be multiplied by the rate of increase of two and eight-tenths (2.8) percent;
       (2) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation;
       (3) Payment for the following transplants shall be made in accordance with this section:
           (a) Kidney;
           (b) Cornea;
           (c) Pancreas; or
           (d) Kidney and pancreas;
       (4) Payment for a transplant not listed in subsection (3) of this section shall be made in accordance with 907-KAR-1:395; and
       (5) Payment for a medically-necessary hospital swing bed shall be made in accordance with 907-KAR-1:055.

Section 4. Psychiatric Hospital-Inpatient Service. (1) The Department for Medicaid Services shall pay for an inpatient psychiatric hospital service provided to an eligible Medicaid recipient in a psychiatric hospital by multiplying the hospital's per diem rate by the number of allowed patient days.
   (2) The per diem rate for a psychiatric hospital for the universal rate year beginning on or after July 2000 shall be determined by the department in accordance with Sections 6 through 13 and 16 of this administrative regulation.
   (3) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation.

Section 13. [5.] Critical Access Hospital. (1) The department shall pay for an inpatient service provided by an in-state [a] critical access hospital to an eligible Medicaid recipient through an interim per diem rate as established by CMS (the Centers for Medicare and Medicaid Services (CMS)) for the Medicare Program.
   (2) The effective date of a rate shall be the same as used by the Medicare Program.
   (3) A hospital's final reimbursement shall reflect any adjustment made by CMS (the Centers for Medicare and Medicaid Services (CMS)) for the Medicare Program.
   (4) The provisions of Sections 3 through 11 [6 through 16] of this administrative regulation shall not apply to a critical access hospital, except:
       (a) A hospital shall be required to submit an annual Medicare/Medicaid cost report;
       (b) The cost report submitted by a hospital shall be subject to audit; and
       (c) Total payments made to a hospital under this section shall be subject to the payment limitation in 42 C.F.R. 447.271.
   (5) An out-of-state critical access hospital shall be paid the median per diem rate of in-state critical access hospitals.
   (6) Payment for a federally defined swing bed in a critical access hospital shall be made in accordance with 907 KAR 1:055.

Section 14. Cost Basis. (1) A hospital per diem rate shall be established relating to allowable Medicaid costs and Medicaid inpatient days.
   (2) An allowable Medicaid cost shall:
       (a) Be a cost allowed after a Medicaid or Medicare audit;
       (b) Be in accordance with 42 C.F.R. Parts 412 and 413;
       (c) Include a hospital provider tax; and
       (d) Not include costs listed in Section 15 of the Medicaid Reimbursement Manual for Inpatient Hospital Services.
   (3) The most recent Medicaid cost report for rehabilitation hospitals, LTAC hospitals, critical access hospitals, psychiatric services in acute care hospitals, and psychiatric hospitals available as of May 1 preceding the current universal rate year shall:
       (a) Be the basis of a prospective payment; and
       (b) Establish the base year.
   (4) A prospective rate shall include both routine and ancillary costs.
   (5) A prospective rate shall not be subject to retroactive adjustment, except for:
       (a) A critical access hospital;
       (b) A facility with a rate based on unaudited data;
       (c) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.
   (7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 C.F.R. 447.271.
   (8) An overpayment shall be recouped by the department as follows:
       (a) A provider owning an overpayment shall submit the amount of the overpayment to the department; or
       (b) The department shall withhold the overpayment amount from a future Medicaid payment due to the provider.

Section 6. Use of a Proximate Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.
   (2) An allowable Medicaid cost shall:
       (a) Be a cost allowed after a Medicaid or Medicare audit;
       (b) Be in accordance with 42 C.F.R. Parts 412 and 413;
       (c) Include a hospital provider tax; and
       (d) Not include costs listed in Section 13(14)(c) and (d) of this administrative regulation or Section 106 of the Medicaid Reimbursement Manual for Hospitals.
   (3) The most recent Medicaid cost report available as of May 1 preceding the current universal rate year shall:
       (a) Be the basis of the prospective payment; and
       (b) Establish the base year.
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(4) A prospective rate shall include both routine and ancillary costs.

(5) A prospective rate shall not be subject to retroactive adjustment, except for:
   (a) A critical access hospital,
   (b) A facility with a rate based on unaudited data.

(6) A facility listed in subsection (5)(a) or (b) of this section shall have its rate reviewed by the department for the universal rate year when the audited cost report for the base year becomes available to the department.

(7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 C.F.R. 447.271.

(8) An overpayment shall be recouped by the department as follows:
   (a) A provider owning an overpayment shall submit the amount of the overpayment to the department;
   (b) The department shall withhold the overpayment amount from a future Medicare payment due the provider.

Section 15. [7.] Use of a Universal Rate Year. (1) Except for the first year of the DRG per discharge system, a universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) In the first year of the DRG per discharge system, the universal rate year shall be the fifteen (15) month period from April 1, 2003 through June 30, 2004. A universal rate year shall be established as July 1 through June 30 of each year to coincide with the state fiscal year.

(3) [22] A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 16. [8.] Trending of a Cost Report. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the universal rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 17. [9.] Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be applied shall be the inflation factor prepared by DRI for the universal rate year.

[Section 10. Peer Grouping. (1) For rate-setting, a hospital shall be peer-grouped based on the number of beds licensed as of May 1 preceding the universal rate year.

(2) A peer group shall be:
   (a) Zero to fifty (50) beds;
   (b) Fifty-one (51) to one hundred (100) beds;
   (c) One hundred to two hundred (100) beds;
   (d) Two hundred to four hundred (200) beds;
   (e) Four hundred to six hundred (400) beds.

(3) A hospital shall not be included in the array for a facility with more than six hundred (600) beds or more but shall be subject to the upper payment limit for a facility with 401 or more beds.

(4) A psychiatric hospital shall not be peer-grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital or an acute care hospital that is restricted to providing rehabilitation services shall not be:
   (a) Peer-grouped;
   (b) Arrayed; or
   (c) Subject to the operating cost upper payment limit.]

Section 18. [14.] Minimum Occupancy Factor. (1) If a hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:
   (a) Artificially increasing the occupancy factor to the minimum factor; and
   (b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:
   (a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer beds;
   (b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more beds; and
   (c) A newly constructed hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 19. [12.] Reduced Depreciation Allowance. (1) The allowable amount for depreciation on a hospital building and fixtures, excluding major moveable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance shall not be applicable to a psychiatric hospital.

Section 20. Readmission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 21. Reimbursement for Out-of-state Hospitals. (1) An acute care out-of-state hospital shall be reimbursed for an inpatient acute care service on a fully-prospective per discharge basis for the universal rate year beginning on or after April 1, 2003. The total per discharge reimbursement shall be the sum of an operating payment amount, a capital-related payment amount, and, if applicable, a cost outlier payment amount.

(a) The operating payment amount shall be based on the patient's Medicare DRG classification. An operating payment amount shall be calculated for each discharge by multiplying a hospital's operating base rate by the Kentucky-specific DRG relative weight. A hospital's operating base rate shall be the Medicare national standardized amount, as adjusted by Medicare for each hospital using the Medicare wage index. An operating payment amount for an out-of-state provider shall exclude:
   1. The Medicare DSH operating adjustment factor; and
   2. The Medicare indirect medical education operating adjustment factor.

(b) The capital-related payment amount shall be made on a per discharge basis. A per discharge payment amount shall be calculated for each discharge by multiplying a hospital's capital-related base rate by the Kentucky-specific DRG relative weight. A hospital's capital-related base rate shall be the Medicare federal capital rate, as adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor when applicable and the Medicare geographic adjustment factor as published in the Federal Register. A capital-related payment amount for an out-of-state provider shall exclude:
   1. The Medicare DSH capital adjustment factor; and
   2. The Medicare indirect medical education capital adjustment factor.

(c) A cost outlier payment shall be made for an approved discharge meeting Medicare criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.

1. The cost outlier threshold for an out-of-state claim shall be determined using the same method used to determine the cost outlier threshold for an in-state claim.

2. The estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be calculated by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

3. The outlier payment amount shall be eighty (80) percent of the amount that estimated costs exceed the discharge's outlier threshold.

(2) An acute care out-of-state hospital shall be reimbursed for an inpatient psychiatric service on a fully-prospective per diem basis for the universal rate year beginning on or after April 1, 2003.

(a) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital's psychiatric per diem rate by
the number of allowed patient days.

(b) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

1. The psychiatric operating per diem rate shall be the median operating cost, excluding graduate medical education, per day for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.

2. The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.

(3) Reimbursement for a service in an out-of-state rehabilitation hospital shall be determined by multiplying a hospital’s rehabilitation per diem rate by the number of allowed patient days.

(4) A rehabilitation per diem rate shall be the median rehabilitation per diem rate for all in-state rehabilitation hospitals.

(5) Reimbursement for a service in an out-of-state psychiatric hospital shall be determined by multiplying a hospital’s psychiatric per diem rate by the number of allowed patient days.

(3) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made under this section.

[Section 13. Upper Payment Limits and Payment Principles: (1) Except as provided in subsection (3) of this section, an acute care hospital with 101 beds or more shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of the hospital’s peer group.

(2) Except as provided in subsection (3) of this section, an acute care hospital with 100 beds or less shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem cost of the hospital in its peer group.

(3) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days delivered from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospitals in that peer group.

(4) Except as provided in subsection (5) or (6) of this section, a state university teaching hospital having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospital’s peer group.

(5) A state university teaching hospital having Medicaid utilization of thirty (30) percent or more, shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 120 percent of the weighted median per diem cost of the hospital’s peer group.

(6) A pediatric teaching hospital shall have an upper payment limit set at 120 percent of the weighted median per diem cost of its appropriate peer group.

(a) A psychiatric hospital shall:

1. Except as provided in paragraph (b) or (c) of this subsection, have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of a hospital in its array.

2. If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper payment limit set at 115 percent of the weighted median per diem cost for a hospital in its array; or

3. Be exempt from the upper payment limit for its array if designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children and be paid at projected actual cost as follows:

a. The Medicare and Medicaid cost reports supplemented by any expenditures allowed on the Medicaid cost report incurred since the filing of the cost report; and

b. Projected additional expenditures for the rate year;

2. Projected additional expenditures for the rate year not subsequently incurred shall be subject to a cost settlement based on actual expenditures allowed on a Medicaid cost report; and

3. The cost determined in subparagraph (1a) of this paragraph shall be adjusted for inflation using the DRI index.

(b) If a desk review or audit of the most current cost report is completed after May 1 but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(9) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital-Inpatient Services.

(10) The payment principles established in this section, Section 2 of this administrative regulation, and the Medicaid Hospital Inpatient Services Reimbursement Manual shall govern reimbursement for an inpatient hospital service.

(11) An array or an upper payment limit shall not be altered after being set by the department.

(12) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper payment limit shall not be established.

(13) A provider tax attributable to Medicaid utilization shall be an allowable cost.

(14) The following limits shall be applied to a per diem rate increase for an acute care hospital excluding a hospital restricted to rehabilitative services:

1. Allowable rate growth from the prior year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period.

2. A limit shall be applied to the capital and operating costs per diem component.

3. Rate growth beyond an amount specified in paragraph (a) of this subsection shall be an unallowable cost; and

4. An unallowable cost resulting from the use of a limit established in paragraph (a) of this subsection shall not be included in the base for future rate setting.

Section 14. Payment for an Inpatient Service for a Child Under Age Six (6) Years. For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) year in a non-disproportionate share hospital, the following shall apply:

(1) For the first thirty (30) days of inpatient service, payment shall be made in accordance with Sections 3, 4, 6, and 22 of this administrative regulation;

(2) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply:

1. To an inpatient service determined by the department to be medically necessary;

2. Thirty (30) days after the date of admission of a child; or

3. For a newborn, thirty (30) days from the date of discharge of the mother; and

(4) Without regard to length of stay or number of admissions.

Section 15. Acute Care Hospital, Rehabilitation Hospital, Critical Access Hospital, and Psychiatric Hospital Inpatient Rates Effective for State Fiscal Year 2003. (1) The reimbursement rate for the rate year beginning July 1, 2002, for an acute care hospital or rehabilitation hospital shall be the rate paid on June 30, 2002.

(2) The reimbursement rate for the rate year beginning July 1, 2002, for a critical access hospital shall be in accordance with Section 6 of this administrative regulation.

(3) The reimbursement rate for the rate year beginning July 1, 2002, for a state-owned or operated psychiatric hospital shall be in accordance with Sections 6 through 13 of this administrative regulation.

(4) Excluding a hospital under subsection (3) of this section, the reimbursement rate for the rate year beginning July 1, 2002, for a psychiatric hospital shall be the rate paid on June 30, 2002.

(5) The provisions contained in Sections 3, 4 and 6 through 8 of this administrative regulation shall be applicable to a rate established in accordance with subsections (1), (2), and (4) of this section.

(6) The provisions contained in Section 14 of this administrative regulation shall be applicable to a rate established in accordance with this section.]
Section 22. [46.] Supplemental Payments. (1) In addition to a payment based on a rate developed under Section 3,[4, or 18] of this administrative regulation, the department shall make quarterly supplemental payments to:
(1) A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:
   (a) Equal to the sum of the hospital's Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and
   (b) Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18).
(2) A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:
   (a) Equal to the difference between payments made in accordance with Sections 3, 4, 5, and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272 [two (2) percent of the base rate for each one (1) percent of Medicaid occupancy], not to exceed the payment limit as specified in 42 C.F.R. 447.271.
(2) Is prospectively determined with no [an] end of the year settlement; and
(3) Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph;
   (c) A hospital that qualifies as an urban trauma center hospital in an amount:
   (a) Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;
   (b) Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;
   (c) That is prospectively determined with an end of the year settlement; and
(4) That is consistent with the requirements of 42 C.F.R. 447.271;
(5) A hospital that qualifies as a psychiatric access hospital in an amount:
   (a) Equal to a hospital's uncompensated costs of providing services to Medicaid recipients and individuals not covered by a third-party payer, not to exceed $6 million annually; and
(6) That is consistent with the requirements of 42 C.F.R. 447.271;
(a) A nonstate government-owned hospital as defined in 42 C.F.R. 447.272(a)(2) that has entered into an intergovernmental transfer agreement with the Commonwealth in an amount equal to the lesser of:
   (a) The difference between the payments made in accordance with Section 3,[4, or 18] of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.272; or
   (b) The difference between the payments made in accordance with Section 3,[4, or 18] of this administrative regulation and an amount consistent with the requirements of 42 C.F.R. 447.271; and
(b) A private, nongovernment owned or operated hospital in an amount:
   (1) Proportional to its Medicaid cost as compared to the total Medicaid costs of all hospitals qualifying under this paragraph; and
   (2) Not to exceed its Medicaid shortfall; and
   (3) Subject to available funds in accordance with an intergovernmental transfer agreement under paragraph (e) of this subsection and Section 3 of 907 KAR 1:015[E]. Available funds shall be:
   (a) Equal to $6 million annually;
(2) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.
(3) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.
(b) Without it the good or service could not be produced.
(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.
(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

Section 26, [28.'] Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 25 [28.] of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.
(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.
(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:
(a) Review evidence regarding the indigent care eligibility determination;
(b) Cross-examine witnesses regarding the indigent care eligibility determination;
(c) Present evidence regarding the indigent care eligibility determination;
(d) Be represented by counsel.
(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:
(a) The patient or responsible party who requested the fair hearing;
(b) The department.
(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.
(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 27, [24.] Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.
(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 28, Retrospective Review. (1) A claim paid in accordance with Section 3 of this administrative regulation shall be subject to retrospective review by the QIO.
(2) An amount paid that is found to be in error shall be recouped by the department in the next payment cycle.
(3) A payment that has been recouped by the department shall not be subject to administrative review. [22.] Payment to a Participating Out-of-State Hospital. (a) A participating out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at the lesser of:
(a) Seventy-five (75) percent of its usual and customary charges; or
(b) A per diem rate equal to the in-state operating per diem upper limit for a comparable size hospital, plus:
   (1) A proportion for capital cost that is equal to the mean capital cost per diem for the appropriate peer group in accordance with Section 10 of this administrative regulation; and
   (2) A proportion for professional component costs that shall be paid at seventy-five (75) percent of charges;
(b) Payments for a child under age six (6) years in a disproportionate share hospital or under age one (1) year in a non-disproportionate share hospital shall be made at the lesser of:
(a) Eighty-five (85) percent of usual and customary charges; or
(b) The amount specified in Section 14 of this administrative regulation.
(3) For the universal year beginning July 1, 1989, the per
diem rate shall be an amount equal to the per diem determined by increasing the per diem determined under subsection (1)(b) of this section for universal rate year 1998, by three (3) percent.

(4) For the universal rate year beginning July 2000, the per diem rate shall be an amount equal to the per diem rate determined under subsection (3) of this section, increased by two and eight-tenths (2.8) percent.

(5) For the universal rate year beginning July 2001, the per diem rate shall:
(a) Be the rate in effect on June 30, 2001; and
(b) Include operating, capital, and professional component costs.

(6) For the universal rate year beginning July 2002, the per diem rate shall be in accordance with Section 15 of this administrative regulation.

Section 23. Provider Appeal Rights. (1) Pursuant to 42 C.F.R. 447.263(e), an appeal filed to review an individual hospital's rate shall be limited to the following:
(a) Increased costs related to allowable inpatient cost centers resulting from a capital expenditure requiring a certificate of need;
(b) Increased costs related to allowable inpatient cost centers resulting from a capital expenditure not requiring a certificate of need meeting a qualifying determining amount of at least twenty-five (25) percent of its total fixed assets as reported on Worksheet G, Line 21 of its base year Medicare cost report; and
(c) A mathematical or clerical error by the department. An appeal presented by the provider for a mathematical or clerical error made by the department shall not be required to meet the provisions established in subsection (2) of this section.

(2) The costs that represent the subject matter of an appeal shall increase the current per diem rate by at least five (5) percent in order for any relief to be granted.

(3) An appeal shall follow the review and appeal mechanism established in 907 KAR 1:671, the provisions of KRS Chapter 13B, and Section 113 of the "Medicaid Reimbursement Manual for Hospital Inpatient Services".


(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
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: November 25, 2003
FILED WITH LRC: December 2, 2003 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 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 January 13, 2004 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 up until close of business February 2, 2004. 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 Owen (564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the payment methodology for inpatient hospital services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the payment methodology for inpatient hospital 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 payment methodology for inpatient hospital services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the payment methodology for inpatient hospital 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 amends inpatient hospital services by implementing a supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis.

(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 all acute care hospitals currently reimbursed by DMS on a DRG basis.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: A supplemental Medicaid shortfall DSH payment which will be added per DRG reimbursed claim. In addition, effective February 1, 2004, the department will recognize a psychiatric or rehabilitation distinct part unit in an acute care hospital which will be paid on a per diem basis.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation will be budget neutral as funds required to implement the amendment will be transferred from savings projected in the outpatient hospital service program.
(b) On a continuing basis: The amendment to this administrative regulation will be budget neutral as funds required to implement the amendment will be transferred from savings projected in the outpatient hospital service program.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation; Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds will be used to implement and enforce this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was applied to psychiatric service reimbursement in acute care hospitals. These services are being excluded from budget neutrality adjustments in order to ensure Medicaid recipient access to psychiatric services in acute care hospitals whose ability to provide services would be jeopardized without the budget neutrality adjustment exclusion.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Medicaid Services for Maternal & Children's Health
(Amendment)

907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 C.F.R. 440.40(b), 441.50 to 441.62, 447.201 to 447.205 [447, Subpart B], 42 U.S.C. 1396a, b, d

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

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 opportunist presented, by federal law for the provision of Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Department for Medicaid Services for early and periodic screening diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent [agency].
(2) "EPSDT" means early and periodic screening, diagnosis, and treatment in accordance with 42 C.F.R. 440.40(b), 441.56(b), c, 441.67, and 441.58.
(3) "EPSDT special services" means a service that is:
(a) Allowable under 42 C.F.R. 441.56 through 441.62 and 42 U.S.C. 1396d(d);
(b) Not otherwise covered under the Kentucky Medicaid Program; and
(c) Medically necessary in accordance with 907 KAR 3:130 to correct or ameliorate a defect, physical or mental illness, or condition of a recipient.
(4) "Recipient" means a Medicaid eligible individual under the age of twenty-one (21), which includes [and—may—include] the month in which the child becomes twenty-one (21).
(5) "Medicaid physician fee schedule" means a list of current reimbursement rates for physician services established in accordance with 907 KAR 3:010, Section 3(1).
(6) (f) "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) A provider shall be reimbursed for a screening service in accordance with the payment provisions established through the appropriate Medicaid provider program.
(2) Payment for a screening service provided by an EPSDT enrolled screening clinic shall be the amount specified in the Medicaid physician fee schedule for the procedure code.
(3) Payment for a screening service shall not exceed the usual and customary charge of the provider for the service, [is defined in 907 KAR 1:002].

Section 2. A physician or primary care center shall be reimbursed for screening services in accordance with the payment provisions established in 907 KAR 3:010 and 907 KAR 1:055 for the service provider.

Section 3. Reimbursement of Enrolled Screening Providers. The department shall reimburse a participating enrolled screening provider on the basis of a preestablished fee which shall be:
(1) Related to the cost of service. The preestablished fees payable shall be in accordance with the following:
(a) 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, except the fifth year (kindergarten examination), and 12th year (sixth-grade examination), the fee shall be seventy (70) dollars per recipient screened;
(b) For a complete screening, which shall include at least a health history and unclotted physical examination, the fee shall be thirty (30) dollars per recipient screened;
(2) For completion of a partial screening, with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in subsection (2) of this section, the fee shall be forty (40) dollars per recipient screened; and
(3) For an interperiodic screening, 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;
[2] Not exceed the usual and customary charge of the provider for the service.

Section 3. [4] Reimbursement of EPSDT Diagnosis [Diagnosis] and Treatment Providers. The department shall reimburse an EPSDT diagnosis [diagnostic] or treatment provider participating in compliance with 907 KAR 1:034, Section 8(1) as specified in 907 KAR Chapters 1 and 3 for reimbursement for the particular diagnosis or treatment service rendered.

Section 4. [5] Reimbursement of EPSDT Special Services Providers. (1) Except as specified in Section 5 [6] of this administrative regulation, the department shall reimburse for an EPSDT special service which is similar to a service covered in another Medicaid Program based on the payment methodology established for that provider program.
(2) Reimbursement for a special service that does not have a reimbursement rate established under subsection (1) of this section shall be based on [provider a percentage of the usual and customary charges--or--a fee negotiated by the department adequate to obtain the service.
(3) The percentage--of--charges--or--negotiated fee shall not exceed 100 percent of the usual and customary charges.
(4) If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.
(5) If an EPSDT special service is provided before prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

Section 5. [6.] Reimbursement of School-based Health Services Providers. (1) The department shall reimburse a school-based health service provider for a service included in an individualized [individual] education program which is provided to a Medicaid eligible recipient based on a fee-for-service system designed to approximate cost for all participating providers in the aggregate without settlement to exact cost.
(2) Payment rates for a service [provided on or after January 1, 1996] shall be established using the following methodology:
(a) (1) Interim payment rates for a service shall be based on annual cost data submitted in accordance with paragraph (b) of this subsection [provided from January 1, 1996, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.

(2) Interim payment rates for a service provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(b) (9) Final payment rates shall be set based on the following:

1. {[(a)] Except as specified in subparagraphs 4 and 5 of this paragraph [paragraphs (d) and (e) of this subsection], a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service;

a. [for The statewide mean and median cost for a service shall be the contracted hourly service cost and the cost associated with publicly employed professionals; and]

b. [for The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean;]

2. [for Cost for publicly employed professionals shall be computed in the following manner:]

a. [for Salary, fringe benefits, and indirect overhead shall be included;]

b. [for Annual professional salaries (including full time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day;]

c. [for The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage; and]

d. [for An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage;]

3. [for Payments for a professional service shall be based on units of service which are fifteen (15) minute increments;]

4. [for Payments for medical transportation provided in accordance with 907 KAR 1:715, Section 3 (6), shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education;]

5. [for Payments for assistive technology and medical equipment provided in accordance with 907 KAR 1:715, Section 3 (6), shall be based on actual invoiced cost including cost of shipping and handling, for the authorized equipment included in an individual education program;]

6. [for Each school year ending June 30, final payment rates shall be set using corresponding cost data available as of September 1 for that school year; and]

7. Final payment rates shall be the lower of the billed charge or the Medicaid rate on file for the date the service is provided;

(c) If the cost data is not submitted within the specified period, the school-based services provider shall be terminated from the program; and

(d) A school-based health services provider shall certify quarterly expenditures of state or local funds used to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3:285.

[The due date for the required cost data shall be July 31 following the end of the state fiscal year (June 30 of each year).]

(2) A one (1) month grace period shall exist for the submission of the cost data. If the cost data is not submitted within the specified grace period, the school-based health services provider shall be terminated from the program.

(h) For prior years ending June 30, 1997 and thereafter, the final rates for prior years shall be set using cost data available as of September 1 of the current rate year.]

MIKE ROBINSON, Commissioner
MARIA MORGAN, Secretary

APPROVED BY AGENCY November 19, 2003
FILED WITH LRC: November 25, 2003 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004, 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 January 13, 2004, 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 amendment to the following administrative regulations.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provisional meeting summary of:

(a) What this administrative regulation does: This administrative regulation establishes the payment methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services and EPSDT Special Services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make payments to EPSDT providers who treat Medicaid-eligible children.

(c) How this administrative regulation conforms to the content of the following statutes: KRS 194A.030(3), 194A.050(1), and 205.520(3) authorize the Cabinet for Health Services, Department for Medicaid Services to administer Title XIX of the Federal Social Security Act and to formulate regulations and execute policies that provide medical care to Kentucky's indigent citizenry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures payments for screenings and special services provided to Kentucky's Medicaid-eligible children under the age of 21.

(2) If 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 provides reimbursement for EPSDT screenings by enrolled Medicaid providers through the appropriate provider program rather than preestablished fees. Screenings performed by enrolled Medicaid screening clinics will be reimbursed in accordance with payment provisions established through the Medicaid Physician Fee Schedule. This amendment also sets reimbursement for EPSDT Special Services at a rate which is similar to a service covered in another program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide uniform payment methodology for all provider types performing well child screenings and providing EPSDT Special Services to Medicaid-eligible children. In addition, this amendment is necessary to comply with current policy regarding standardized procedure codes as a result of newly implemented Health Insurance Portability and Accountability Act (HIPAA).

(c) How the amendment conforms to the content of the following statutes: This amendment establishes criteria to reimburse providers who provide EPSDT screenings or EPSDT Special Services to Medicaid-eligible children.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the Department for Medicaid Services to make payment to providers who administer services to Kentucky's indigent children.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administr-
tive regulation: Approximately 10,000 providers will be affected by this 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: Medicaid providers who currently conduct EPSDT screenings will be required to change current billable EPSDT screening procedures to comply with the newly enacted Health Insurance Portability and Accountability Act (HIPAA) guidelines.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Budget neutral.
(b) On a continuing basis: Same
(c) 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 the Social Security Act, Title XIX and matching funds of general fund appropriations.

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

(7) Provide an assessment of whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(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 Physicians and Specialty Services
(Amendment)

907 KAR 3:170. Telehealth services and reimbursement.


STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(7), 205.560

EFFECTIVE: December 1, 2003
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. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers. The administrative regulation establishes the coverage provisions relating to telehealth services and the method of determining reimbursement for services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions. (1) "Consultation" means a type of evaluation and management service as defined by Current Procedural Terminology, CPT 2003 [2004] edition or the annual replacement revision upon its adoption by the department.

(2) "CPT code" means a code used for reporting procedures and services performed by physicians and published by the American Medical Association in Current Procedural Terminology, CPT 2003 [2004] edition or the annual replacement revision upon its adoption by the department.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(4) "GT modifier" means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).

(a) Licensed physician.
(b) [c] Licensed advanced registered nurse practitioner.
(c) [d] Certified physician assistant working under physician supervision.
(d) [e] Licensed dentist or oral surgeon; or
(e) Licensed CMHC.

(5) "Hub site" means a telehealth site where the medical specialist providing the telehealth service is located and is considered the place of service.

(6) "KenPAC" means the Kentucky Patient Access and Care system.

(7) "KentPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

(8) "Legally authorized representative" means a recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(9) "Licensed community mental health center" or "licensed CMHC" means a facility that provides a comprehensive range of mental health services to recipients of a designated area in accordance with KRS 210.370 to 210.480.

(10) "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with KRS 3:130.

(11) "Medical specialist" means a physician specialist, or an oral surgeon, or a CMHC as specified in Section 4(1) [2(4)] of this administrative regulation.

(12) "Telehealth site" means a telehealth site where the recipient receiving the telehealth service is located.

(13) "Telehealth service" means a medical service provided through advanced telecommunications technology from a hub site to a recipient at a spoke site.

(14) "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth service.

Section 2. Covered Services. (1) Except as restricted in accordance with Section 3 of this administrative regulation, a telehealth service shall be covered if medically necessary.

(2) A telehealth service shall require:
(a) The use of two (2) way interactive video;
(b) A referral by a health care provider specified in Section 4(2) of this administrative regulation;
(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and
(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 3. Limitations. (1) Coverage of telehealth services for a non-CMHC shall be limited to a maximum of four (4) telehealth services per recipient per year if provided as follows [in accordance with paragraph (a) or (b) of this subsection]:

(a) For a recipient [recipient's] age twenty-one (21) years and older, the evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or
(b) For a recipient [recipient's] under the age of twenty-one (21) years:
   1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if pro-
vided by a medical specialist specified in Section 4(1) of this administrative regulation; and

2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.

(2) Coverage for a telehealth service for a licensed CMHC shall be limited to twelve (12) psychiatric services per recipient per year and shall be billed using the following diagnostic CPT service codes:

1. 90801 for a diagnostic interview examination;
2. 90862 for medication management;
3. 90887 for an outpatient collateral;
4. 90804 for an individual psychotherapy; or
5. 90847 for an outpatient family therapy.

(3) Coverage shall not be provided for a service that requires face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

Section 4. Eligible Providers. (1) A [The] medical specialist at a [the] hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR 1:671 and 907 KAR 1:672 and shall be:

(a) For a non-CMHC a licensed physician in one (1) of the following specialties or subspecialties:
   1. Dermatology;
   2. Emergency medicine;
   3. An internal medicine subspecialty;
   4. General surgery or a surgery subspecialty;
   5. Neurology;
   6. Obstetrics and gynecology;
   7. A pediatric subspecialty;
   8. Psychiatry; or
   9. Radiology or radiation medicine; or
   10. (b) A licensed oral surgeon; or
   (b) For a licensed CMHC:
      (1) A [psychiatrist] or
      (2) An advanced registered nurse practitioner.

(2) A [The] health care provider requesting a telehealth service shall be enrolled as a Medicaid provider who is a:

(a) Licensed physician;
(b) Licensed advanced registered nurse practitioner;
(c) Certified physician assistant working under physician supervision; or
(d) Licensed dentist or oral surgeon; or
(e) A licensed CMHC.

Section 5. Reimbursement. (1) The department shall reimburse a medical specialist located at a [the] hub site for a telehealth service:

(a) An amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3:010; or
(b) If a licensed CMHC, in accordance with 907 KAR 1:045.

(2) A medical specialist shall bill for a service using the appropriate evaluation and management CPT code as specified in Section 4 of this administrative regulation with the addition of the two (2) letter "GT" modifier.

(3) The department shall not require the presence of a [the] health care provider requesting a [the] telehealth service at the time of the telehealth service unless it is requested by a [the] medical specialist at the hub site.

(4) Reimbursement shall not be made for transmission costs.

Section 6. Confidentiality and Data Integrity. (1) [Confidentiality laws and other requirements that apply to written medical records shall apply to electronic medical records and telehealth services.]

(2) A telehealth service shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth service information.

(2) [33] Both a [the] hub site and a [the] spoke site shall use authentication and identification to ensure the confidentiality of a [the] telehealth service.

(3) (4) A provider of a telehealth service shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;
(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and
(c) Preventing unauthorized access to a telehealth transmission.

(4) [66] A provider's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent. (1) Before providing a telehealth service to a recipient, a [the] health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a formal and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth service at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;
(b) The recipient shall be informed of alternatives to the telehealth service that are available to the recipient;
(c) The recipient shall have access to medical information resulting from the telehealth service as provided by law;
(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth service shall not occur without the written informed consent of the recipient or the recipient's legally authorized representative;
(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth service and shall have the right to exclude anyone from either site; and
(f) The recipient shall have the right to object to the video taping of a telehealth service.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally authorized representative upon request.

(3) The requirement to obtain informed consent before providing a service shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally authorized representative is unavailable.

Section 8. Medical Records. (1) A request for a telehealth service from a physician or other health care provider specified in Section 4(2) of this administrative regulation and the medical necessity for the telehealth service shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth service provided to a recipient and follow applicable state and federal statutes and regulations for medical record keeping and confidentiality in accordance with KRS 194A.000, 422.317, 434.840 - 434.860, and 42 C.F.R. 431 Subpart F.

(3) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1:672.

(4) Documentation of a [the] telehealth service by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth service and a progress note by the referring health care provider if present at the spoke site during the telehealth service;
(b) The location of the hub site and spoke site;
(c) A copy of the signed informed consent form; and
(d) Documentation supporting the medical necessity of the telehealth service.

(5) [The] medical specialist's diagnosis and recommendations resulting from a [the] telehealth service shall be documented in the recipient's medical record at the recipient's location. The medical specialist shall send a written report to the referring health care provider.

Section 9. Appeal Rights. (1) An appeal of a [negative action taken by the] department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a [negative action taken by the] department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department decision as to the
application of this administrative regulation [An appeal of a negative action taken by the department regarding a Medicaid provider shall be] in accordance with 907 KAR 1:671.

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: November 20, 2003

FILED WITH LRC: December 1, 2003 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: Cabinet for Health Services A public hearing on this administrative regulation shall be held on January 21, 2004 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 January 13, 2004 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 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 up until close of business February 2, 2004. Send written notice 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) 564-7573.

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 the provisions for coverage and reimbursement for telehealth services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 205.559.

(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 a method for reimbursing for telehealth services and limitations on coverage.

(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 providing a method for the reimbursement for services provided by way of telehealth technology.

(2) If 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 allow community mental health centers (CMHC) to provide services to Medicaid recipients via telehealth technology.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to allow CMHC’s to provide Medicaid recipients access to services in rural areas.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will assist in the effective administrative regulation of the authorizing statutes by ensuring that Medicaid recipients in rural areas have access to CMHC services via telehealth technology in accordance with KRS 205.559.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administrative regulation of the authorizing statutes by ensuring that Medicaid recipients in rural areas have access to CMHC services via telehealth technology in accordance with KRS 205.559.

(3) List the typical number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients needing CMHC services and enrolled in-state Medicaid physician specialists providing consults and psychotherapy through established telehealth networks.

(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: Recipients in rural areas will now have access to psychiatric services without having to travel to urban access areas.

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

(a) Initially: The amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.

(b) On a continuing basis: The amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.

(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 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 amendment to this administrative regulation enhances recipient access and could increase utilization; however, those increases could be offset by reduced transportation costs and reduced hospitalization. Therefore, the fiscal impact of this amendment is indeterminable at this time.

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

(9) Tiering: Is tiering applied? The amendment to this administrative regulation enables CMHC’s to now also provide services via telehealth technology in accordance with KRS 205.559; thus, enhancing recipient access to CMHC services.

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
Health and Development Division

911 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.650 requires the Cabinet for Health Services to administer 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 evaluation and eligibility requirements for 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 annual IFSP meetings scheduled on or after April [January] 1, 2004, 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 (8) 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 shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.

(b) If a determination of initial eligibility, assessments and initial IFSP team meeting 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 a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child 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.

(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:

(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and
(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.

(4) The primary level evaluation shall be the first level in the First Steps evaluation system and shall be utilized to determine eligibility, developmental status and recommendations for further assessment to determine program planning.

(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:

1. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps;
   or
2. For children twelve (12) months to three (3) years of age, the evaluation was 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.

(b) If there is a previous primary level evaluation available that was performed within the timeframes established in subparagraph 1 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.

(c) Primary level evaluations shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c)(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) The primary level evaluation shall be provided by:
   1. A physician or nurse practitioner; and
   2. A primary evaluator approved by the cabinet.

(e) A primary level evaluation shall include:
   1. A medical component completed by a physician or a nurse practitioner that shall include:
      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 Periodicity Schedule; and
   2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, 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 subsection (5) of this section.

(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child’s eligibility in accordance with subsection (4)(e)(2b) 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 his assessment and progress reports; and
   c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.

(b)1. 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’s and the Commission for Children with Special Health Care Need’s (CCHSNC)’s Title V programs, and other third-party payors.

2a. If the child has an established risk condition, and the developmental evaluation 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 (8) 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)(ii) of this subparagraph occurs, the procedure established in Section 2(2) of this administrative regulation shall be followed.

(6) 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 personal outside of the family, if the family requests that the person participate;
   4. The initial service coordinator;
   5. The primary service coordinator;
   6. A provider who performed an assessment on the child; and
   7. If appropriate, a First Steps provider who shall provide services to the child or family;

(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.

(7)(a) Reevaluations shall be provided if the IFSP team determines 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.

(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:

1. Continue with the same level of services;
2. Continue with modified services; or
3. Transition the child from First Steps services.

(8) The provisions of this subsection shall apply to annual IFSP meetings scheduled on or after April 1, 2004.

(a) In accordance with KRS 200.664(7), in order to determine on-going eligibility:

1. 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. An updated medical evaluation shall be obtained from the child’s physician or nurse practitioner in accordance with subsection (4)(e)(2c) of this section.

(b) 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) If the results of the annual evaluation do not meet the continuing program eligibility requirements of Section 2(4) of this administrative regulation, the service coordinator shall:
1. Within three (3) days of receiving the written evaluation report, notify the service provider of the results of the evaluation and that therapeutic intervention shall cease when the current IFSP expires;
2. Notify the family of the results of the evaluation and that when the current IFSP expires, the child and family are no longer eligible for First Steps services;
3. Facilitate a transition conference in accordance with 911 KAR 2:140, Section 1(14); and
4. Subsequent to the transition conference, discharge the child from the program.

(d) If the procedure established in Section 2(2) of this administrative regulation is administered, the service coordinator shall refer the information required by subsection (9)(b) of this section to the record review team within five (5) workdays of receiving the annual evaluation results.

(2) If the results of the annual developmental evaluation meet the continuing program eligibility requirements established in Section 2(4) of this administrative regulation, the IFSP team shall be convened for the annual IFSP meeting in accordance with 911 KAR 2:130, Section 2.

(9) A review of the child's First Steps record shall be 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.

(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the CCHSN for a record review if:
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;
2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and 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 evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b1. If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Committee, Louisville CCHSN office at 982 Eastern Parkway, Louisville, Kentucky 40217:
1. A letter from the service coordinator or primary evaluator justifying the referral for a record review;
2. Primary level evaluating information specified in subsection (10) of this section;
3. Available assessment reports required in 911 KAR 2:130;
4. Available IFSPs and amendments;
5. Most recent progress reports from the IFSP team members.
6. Reports older than three (3) months shall include an addendum reflecting current progress;
7. Therapeutic staff notes from the previous two (2) months; and
g. A request for 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.

(1) A request for a record review shall attempt to procure and submit the following information, if available:
1. Birth records, if neonatal or perinatal complications occurred;
2. General pediatric records from the primary pediatrician;
3. Medical records from hospitals; and
4. 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 eligibility criteria established in Section 2(1) of this administrative regulation; and
   c. Provide the IFSP team with recommendations for service planning.
3. 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:
   a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and
   b. Refer:
      (i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or
      (ii) 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 recommendation for transition planning.
5. Upon the record review team reviewing the child's record, the team shall provide the family with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.

(10) Upon request of the CCHSN, a team approved by the CCHSN and consisting of the members shall perform an intensive level evaluation:
1. A board certified developmental pediatrician;
2. A pediatrician who has experience in the area of early childhood development;
3. A pediatric psychiatrist; or
4. A pediatric neurologist; and

2. a. One (1) or more 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 concerns expressed by the intensive level evaluation team.

(11) A report shall be written in accordance with the time frames established in paragraph (c1) of this subsection upon completion of a (each) primary level evaluation, record review and intensive level evaluation.

(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:
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. Name and telephone number of the contact person;
5. 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 prema-
Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:
(a) Aged birth through two (2) years;
(b) A resident of Kentucky at the time of referral and while receiving a service;
(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:
   1. Total cognitive development;
   2. Total communication area through speech and language development, which shall include expressive and receptive;
   3. Total physical development including growth, vision and hearing;
   4. Total social and emotional development; or
   5. Total adaptive skills development; and
(d) Significantly behind in developmental norms as evidenced by the child's score being:
   1. Two (2) standard deviations below the mean in one (1) skill area; or
   2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(2)(a) If a norm-reference testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (1)(d) of this section, more in-depth standardized test in that area of development may be administered if the following is evident:
1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child's delay may be greater than the testing revealed;
2. A more sensitive norm-referenced test tool may reveal a standardized score which would meet eligibility criteria; and
3. There is one (1) area of development that is of concern.
(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 199(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.

(3) A child shall be eligible for First Steps services if:
(a) The child is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or
(b) Meets the criteria established in KRS 200.554(10)(b) who has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):

- Aase-Smith syndrome
- Aase syndrome
- Acrocallosal syndrome
- Acrodysostosis
- Acro-Fronto-Facio-Nasal Dysostosis
- Adrenoleukodystrophy
- Agenesis of the Corpus Callosum
- Agryria
- 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
- Arhinencephaly
- Arthrogryposis
- Ataxia
- Atlanto-axial subluxation
- Autism
- Bailer-Coroid syndrome
- Banayan-Riley-Ruvalcaba syndrome
- Bardet-Biedi syndrome
- Bartocas-Papcs syndrome
- Beals syndrome (congenital contractual arachnodactyly)
- Biotinidase Deficiency
- Bixler syndrome
- Blackfan-Diamond syndrome
- Bobble Head Dooi syndrome
- Borcherson-Forsman-Lehnemann syndrome
- Brachial Plexopathy
- Brancio-Oto-Renal (BOR) syndrome
- Campomelic Dysplasia
- Canavan Disease
Isovaleric Acidemia  
Jarcho-Levin syndrome  
Jervell syndrome  
Johanson-Blizzard syndrome  
Joubert syndrome  
Kabuki syndrome  
KBG syndrome  
Kenny-Caffey syndrome  
Klee Blitschadel  
Klippel-Feil Sequence  
Landau-Kleffner syndrome  
Lange-Nielsen syndrome  
Langer Giedion syndrome  
Larsen syndrome  
Laurin-Sandrow syndrome  
Leber's Amaurosis  
Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)  
Leigh Disease  
Lennox-Gastaut syndrome  
Lenz Majewski syndrome  
Lenz Micophthalmia syndrome  
Levy-Hollister (LADD) syndrome  
Lesch-Nyhan syndrome  
Leukodystrophy  
Lissencephaly  
Lowe syndrome  
Lowry-Maclean syndrome  
Maffucci syndrome  
Mannosidosis  
Maple Syrup Urine Disease  
Marden Walker syndrome  
Marshall syndrome  
Marshall-Smith syndrome  
Maroteaux-Lamy syndrome (MPS VI)  
Maternal PKU Effects  
Megalecephaly  
MELAS  
Meningocoele (cervical)  
MERRF  
Metachromatic Leukodystrophy  
Metatropic Dysplasia  
Methylmalonic Acidemia  
Microcephaly  
Microtia-Bilateral  
Midas syndrome  
Miller (postaxial acrofacial-Dysostosis) syndrome  
Miller-Dieker syndrome  
Mitochondrial Disorder  
Moebius syndrome  
Morquio syndrome (MPS IV)  
Moya-Moya Disease  
Mucolipidosis II, III  
Multiple congenital anomalies (major organ birth defects)  
Multiple Pterygium syndrome  
Muscular Dystrophy  
Myasthenia Gravis - Congenital  
Myelocystocele  
Myopathy - Congenital  
Myotonic Dystrophy  
Nager (Acrofacial Dysostosis) syndrome  
Nance Horan syndrome  
NARP  
Neonatal Meningitis/Encephalitis  
Neuronal Ceroid Lipofuscinosis  
Neuronal Migration Disorder  
Nonketotic Hyperglycinemia  
Noonan syndrome  
Ocular Albinism  
Oculocerebrotocutaneous syndrome  
Oculo-Cutaneous Albinism  
Optic Atrophy  
Optic Nerve Hypoplasia  
Oral-Facial-Digital syndrome Type I-VII  
Osteogenesis Imperfecta Type III-IV  
Osteopetrosis (Autosomal Recessive)  
Oto-Palato-Digital Syndrome Type I-II  
Pachygyria  
Pallister Mosaic syndrome  
Pallister-Hall syndrome  
Pellizaeus-Merzbacher Disease  
Pendred's syndrome  
Periventricular Leukomalacia  
Pervasive Developmental Disorder  
Peters Anomaly  
Phocomelia  
Pierre Robin Sequence  
Poland Sequence  
Polymicrogyria  
Popliteal Pterygium syndrome  
Porencephaly  
Prader-Willi syndrome  
Progeria  
Propionic Acidemia  
Proteus syndrome  
Pyrurate carboxylase Deficiency  
Pyrurate Dehydrogenase Deficiency  
Radial Aplasia/Hypoplasia  
Refsum Disease  
Retinoblastoma  
Retinoic Acid Embryopathy  
Retinopathy of Prematurity Stages III, IV  
Rett syndrome  
Rickets  
Rieger syndrome  
Roberts SC Phocomelia  
Robinow syndrome  
Rubinstein-Taybi syndrome  
Sanfilippo syndrome (MPS III)
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<th>Schwartz-Jampel syndrome</th>
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<th>Septo-Optic Dysplasia</th>
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<td>Spinal Muscular Atrophy</td>
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<td>Thanatophoric Dysplasia</td>
<td>Tibial Aplasia (Hypoplasia)</td>
<td>Toriello-Carey syndrome</td>
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<td>Tuberous Sclerosis</td>
<td>Urea Cycle Defect</td>
<td>Velocardiofacial syndrome (22q11.2 deletion)</td>
<td>Wildervanck syndrome</td>
<td>Walker-Warburg syndrome</td>
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(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the annual evaluation:
(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; and
(b) Indicate a score below one (1) standard deviation below the mean in at least one (1) skill area that showed a previous score of at least one and one-half (1 1/2) standard deviations below the mean in that same area.

(5) 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) 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 appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.
(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.
(d) 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.

JAMES GILDERSLEEVE, Chair Commissioner
ERIC FRIEDLANDER, Executive Director
APPROVED BY AGENCY: December 5, 2003
FILED WITH LRC: December 15, 2003 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 at 9 a.m. in the Health Services Auditorium, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-C, Frankfort, Kentucky 40621, phone (502) 564-7905, fax, (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trish Howard or Eric Friedlander
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 200.660 requires the cabinet to promulgate regulations implementing the provisions for this program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the eligibility criteria.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By clearly defining the eligibility criteria for this program, this administrative regulation assists the statutes in implementing the First Steps 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 amendment will provide adequate time for training personnel involved in conducting annual primary level evaluations mandated by KRS 200.664(7). This additional time will improve quality assurance of the services provided through this program.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to allow Primary Service Coordinators additional time to better organize their work.
loads in order to implement the annual evaluations.

c. How the amendment conforms to the content of the authorizing statutes: KRS 200.650 requires promulgation of an administrative regulation that implements the provisions of this program. KRS 200.664(7) mandates implementation of an annual evaluation for all children enrolled in the First Steps Program in order to determine ongoing program eligibility and the effectiveness of services provided to those children.

d. How the amendment will assist in the effective administration of the statutes: By allowing primary service coordinators additional time to better organize their workloads in order to implement the annual evaluations, the administration can be better prepared to measure the outcomes for children and the effectiveness of services for the children.

3. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 4100 children who are enrolled in this program at any given time and approximately 1000 providers participating. Potentially all of these individuals and agencies may 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 changes included in this amendment will provide clearer direction as to whether a child is progressing while in the First Steps Program, and if so, how much improvement there has been while enrolled.

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

(a) Initially: This amendment is considered to be budget neutral because it is delaying the implementation of the annual evaluations by three months. The fiscal impact of 2003 SB 80 was thought to be budget neutral because the annual evaluations would inevitably result in some children being assessed as "age-appropriate" and would no longer be eligible for the program.

(b) On a continuing basis: same as above.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Part C and Medicaid funds and state general funds.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fee or funding increases associated with this administrative regulation.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish 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
Commission for Children with Special Health Care Needs
Health and Development Division

(Amendment)

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 to administer funds appropriated to implement the provisions of KRS 200.650 to 200.679, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes 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 the primary level evaluation.

(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.

(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 on-going procedure used by personnel meeting the qualifications established in 911 KAR 2:150 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 multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program. Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations, which shall:

   a. Take place over several days if possible;

   b. Occur in natural settings;

   c. Include play and functional activities of the child's day; and

   d. Be recorded in a factual manner;

2. Interview and parent reports, which shall:

   a. Involve the use of open-ended questioning after the assessor establishes rapport;

   b. Be provided by parents and other primary caregivers; and

3. Behavioral checklist and inventories, which shall:

   a. Be completed by caregivers by mail, phone or through face-to-face interview; and

(b) 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.

(c) 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.

(d) 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.
(5) A service coordinator shall 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.

(6) The written assessment report shall include:
(a) A description 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;
   2. The child's Social Security number, if available;
   3. The name of the child;
   4. The child's age at the date of the assessment;
   5. The name of the service provider and discipline;
   6. The date of the assessment;
   7. The setting of the assessment;
   8. The state of health of the child during the assessment;
   9. The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;
   10. The medical diagnosis if the child has an established risk condition;
   11. The formal and informal instruments and assessment methods and activities used;
   12. Who was present for the assessment; and
   13. The signature of the assessor;
(d) A profile of the child's level of performance, in a narrative form which shall indicate:
   1. Concerns and priorities;
   2. Child's unique strengths and needs;
   3. Skills achieved since last report, if applicable;
   4. Emerging skills; and
   5. Direction of future service delivery;
(e) Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and
(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.

(7)(a) The initial assessment, other formal assessments and their resulting report shall be completed and sent to the service coordinator within ten (10) working days of the provider receiving the complete written assessment referral from the service coordinator. The complete assessment referral request shall include:
   1. The point of entry's intake and child history documentation;
   2. The [Point-of-Entry] Update Form; and
   3. a. The primary level evaluation report;
   b. I. Prior to July [January] 1, 2004, if an IFSP is in place, page 1 of the IFSP (Form 10) authorizing the assessment;
   (ii) The IFSP Meeting-Summary Sheet Services Form; and
   (iii) The primary level evaluation report; or
   c. If the July [January] 1, 2004 edition of the IFSP is in place, the "Amendment: Assessment Not Indicated by PLE Score" page of the IFSP, if applicable;
   (ii) The "Ongoing Evaluation and Eligibility" page; and
   (iii) The "Ongoing Evaluation/Assessment/Progress Report Results" page; and
   (a) The "Your Family and Childcare Routines" [Child Learning Profile] page.
(b) The provider who performed the assessment shall:
1. Verbally share 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;
(c) If the time frame established in paragraph (a) of this subsection is not met 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, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8) Information gathered in the assessment shall be used to determine the service decisions included in the IFSP.

(9) (a) A child enrolled in First Steps shall receive an assessment as an integral part of service delivery.

(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.
(d) (a) Ten (10) calendar days prior to the earlier of the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.
(b) The following information shall be included in the progress report:
1. The name of the child;
2. The date of birth of the child;
3. The child's identification number or social security number; and
4. The name of the service coordinator; or
(b) The name and title of the person completing the report;
6. The name of the agency completing the report, if applicable;
7. The service being provided, along with the frequency and intensity; and
8. Whether the service was provided in an office, home, community or group setting;
9. The child's actual attendance over the six (6) month period;
10. The six (6) month summary of progress note, which shall include information that indicates any advances or declines, if any, the child has made in the six (6) months;
11. The child's current developmental age range;
12. Recommendations;
13. The signature of the person completing the report; and
14. The date of the report.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract with the family and providers. A service included in the IFSP shall be provided unless the family chooses not to receive the service.

(2) The First Steps IFSP Form shall be used to record the IFSP. For meetings that occur prior to July [January] 1, 2004, the October 1998 IFSP form shall be used. For meetings that occur on or after July [January] 1, 2004, the July [January] 2004 IFSP form shall be used. Items on the IFSP form shall be completed as instructed on the form. The accompanying [initial] IFSP documentation shall include:
(a) Appropriate evaluation reports in accordance with 911 KAR 2:120, Section 1 and assessments reports in accordance with this section;
(b) Identification of covered services; and
(c) Progress reports, in accordance with Section 1(10) of this administrative regulation;
(d) Staff notes, which shall include the following information:
1. The child's name;
2. The child's identification number or Social Security number;
3. The date of service or contact;
4. The beginning and ending time of the service;
5. The service setting and the type of contact, such as phone, face-to-face, office or center;
6. The discipline;
7. A description of what happened during the session, the child's response and future action to be taken; and
8. The staff's signature, degree and title;
9. A discharge summary, if a service provider is discharging a child prior to his exit from the total program. The discharge summary shall include the following information:
   1. The child's name;
   2. The child's date of birth;
   3. The child's identification number or Social Security number;
   4. The child's primary service coordinator;
   5. The name of the professional service agency that is discharging the child;
   6. The child's entry and exit date to that service;
7. The reason for discharge;
8. The summary of services and progress;
9. Recommendations;
10. The signature of the person completing the report; and
11. The date the report was completed.

Sign approval by the IFSP team that shall include individuals identified on the "Providers and Funding Sources" page [in the responsible party column] of the IFSP.

(3)(a) With the exception of a situation established in paragraph (b) or (c) of this subsection, an authorized IFSP shall be valid for a period not to exceed six (6) months in length. An amendment that occurs to the IFSP shall be valid for the remaining period of the plan.

(b) 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 CCHSN 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 to extend the IFSP; and
   b. Parents are aware that they have the option of:
      (i) Having an IFSP team meeting;
      (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 CCHSN:

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 inability to keep an appointment, the service provider shall document the circumstances in his or her staff notes.

(4) The following shall be adhered to in the development and implementation of the IFSP. IFSP team members shall:

(a) Provide a family-centered approach to early intervention;
(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;
(c) Show respect for and acceptance of the diversity of family-centered early intervention;
(d) Allow families 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;
(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships;
(h) Ensure that First Steps services are flexible, accessible and responsive to family-identified needs; and
(i) Ensure that families have access to services provided in an accessible and environment as possible and that promote the integrity of the child and family within the community.

(5)(a) 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 be conducted within forty-five (45) days after the point of entry receives the referral.

(b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child, [or approval to delay by the parent, or another reason], the delay circumstances shall be documented on the IFSP.

(6) The IFSP shall be reviewed for a child and the child's family by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) The family requests a review;
(b) The child's condition changes;
(c) For IFSP meetings that occur before July [January] 1, 2004 and except for a situation established in subsection (7)(a)8 or 7(6) of this section, a service provider identified on the IFSP form changes;
or
(d) Except for a situation established in subsection (7)(a)3 [(e)] 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)(a) 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. 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 a (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;
   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 or the family;
   b. The replacement primary service coordinator does not change the outcomes identified on the IFSP;
   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 provider numbers and the family wishes to retain that team member's services;
   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;

(b) If a member of the IFSP team determines that an additional assessment is needed [change identified in paragraph (a) of this subsection occurs] prior to July [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) [Except for the change identified in paragraph (a) of this subsection, with the exception of an IFSP team member determining that an additional assessment is needed, if a change identified in paragraph (a) of this subsection occurs on or after July [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 not be required.

2. If a member of the IFSP team determines that an additional assessment is needed [change identified in paragraph (a) of this subsection occurs] on or after July [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.

(8) With the approval of the family, the primary service coordinator shall arrange a conference to discuss the transition of the family from the program. 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 providers.

(9) The IFSP shall include:
(a) A summary of the family rights handbook;
2. A signed statement of assurances by the family; and
3. A statement signed by the parent that complies with KRS 206.84(8).
(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;
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 emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. These include:
a. Parent and infant bonding;
b. Interactions with peers and adults;
c. Play skills;
d. Self-concept development; and
5. Bonding with family members;
6. Physical development that shall be documented annually and that shall include:
a. Vision;
b. Hearing;
c. Health; and
d. If present, the established risk condition;
(e) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
(d) 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 lines 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. Be functionally stated;
b. Be representative of the family’s own priorities;
c. Fit naturally into the family’s routines or schedules;
d. Reflect the use of the family’s own resources and social support network; and
e. 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; and
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;
(g) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall be stated in frequency, intensity, duration, location and method of delivering services, and shall include payment arrangements, if any;
2. With the exception of the 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 not exceed one (1) hour per discipline per week for the following disciplines:
a. Audiologist;
b. RN or LPN;
c. Nutritionist or dietician;
d. Occupational therapist or occupational therapist assistant;
e. Orientation and mobility specialist;
f. Physician;
g. Physical therapist or physical therapist assistant;
h. Psychologist, certified psychologist with autonomous functioning, psychological associate, family therapist. or licensed social worker;
i. Speech and language pathologist or speech language pathologist assistant;
j. Teacher of the visually impaired;
k. Teacher of the deaf and hard of hearing; or
l. Developmental interventionist or developmental associate;
3. A description of 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
4. If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason;
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. 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;
(j) The name of the primary service coordinator chosen to represent the child’s or family’s needs. The primary service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 911 KAR 2:140, Section 1(b).
(k) 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 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 local public educational agency; and
3. Other agencies at the family’s request that could be potential service agencies after the child turns three (3); and
3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting; and
4. 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; and
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
service 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-release 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;
(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:

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.

(11) The family shall be encouraged to discuss their child's activities, strengths, likes and dislikes, exhibited at home.

(12) The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(13) Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(14) The families may agree, disagree, or refuse the assessment information.

(15) The family's interpretation and perception of the assessment results shall be ascertained and the family's 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 by Reference. (1) The following materials are incorporated by reference:

(a) First Steps Individualized Family Service Plan (IFSP), October 28, 1998; and
(b) First Steps Individualized Family Service Plan (IFSP), July (January) 2004.

(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.

JAMES GILDERSTEELE, Chair Commissioner

ERIC FRIEDLANDER, Executive Director

APPROVED BY AGENCY: December 5, 2003
FILED WITH LRC: December 15, 2003 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 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 January 13, 2004, 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-C, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trish Howard or Eric Friedlander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky's Early Intervention Program.
(b) The necessity of this administrative regulation: KRS 200.660 requires the cabinet to promulgate administrative regulations regarding this program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing the assessment and IFSP requirements for services provided through this program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by providing the criteria by which a child shall be assessed for services and by providing the requirements for an Individualized Family Services Plan (IFSP) in accordance with KRS 200.664.
(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 allows for a revision of the IFSP form, with the input of various stakeholders throughout the Commonwealth and the Interagency Coordinating Council (ICC) and to include requirements for a staff note, a progress report, and a discharge summary.
(b) The necessity of the amendment to this regulation: This amendment is necessary in order to ensure that the IFSP meetings are family-centered and coordinated among agencies in accordance with KRS 200.654(7) and to include requirements for a staff note, a progress report, and a discharge summary.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the promulgation of administrative regulations in order to implement this program and facilitates the implementation of services authorized on the IFSP in accordance with KRS 200.660(6).
(d) How the amendment will affect the effective administration of the statutes: By promulgating this regulation, the First Steps Program will be able to continue to provide much needed services to the vulnerable developmentally delayed children of Kentucky in compliance with federal regulations.
(e) How the amendment will affect the number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This regulation potentially affects approximately 640 providers and 4100 children annually.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment: This amendment will enable service coordinators and IFSP team members to make IFSP meetings more meaningful to families and will enable the administration to capture data mandated by the federal Office of Special Education Programs.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The amendments to this regulation are not anticipated to result in a fiscal impact.
(b) On a continuing basis: Same
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Part C, and Medicaid funding and state General Funds.
(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: An increase in fees or funding will not be necessary in order to implement this amendment.
(e) 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.
(f) 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 FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.


STATUTORY AUTHORITY: KRS 194B.050(1), 205.245, 42 U.S.C. 1382(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, security, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973 and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind, or had a disability.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Department for Mental Health and Mental Retardation Services" means a department within the Cabinet for Health Services.

(5) [29] "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(6) [63] "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Office of Inspector General" means an office within the Cabinet for Health Services.

(8) [47] "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(9) [65] "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for the Supplemental Security Income or "SSI" Program due to income but whose special needs entitled the recipient [him] to an Aid to the Aged, Blind and Disabled Program payment as of December 13, 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 13, 1973 and

(b) The total of the "SSI" [Supplemental Security Income] Program payment; or

2. [66] The total of the "SSI" [Supplemental Security Income] Program payment and other income for the current month.

(4) A mandatory payment shall discontinue when:

(a) The needs of the recipient as recognized in December 13, 1973 have decreased; or

(b) Income has increased to the December 13, 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 13, 1973 decreases;

(b) The "SSI" [Supplemental Security Income] Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 6 of this administrative regulation [utilized by the department in determining optional supplementation payments] for a class of recipients is increased.

(6) A husband and wife are living together, an income change after September 7, 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 13, 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) KRS 907 KAR 1:011, Sections 1(4), 5(5), 6(7), 7(13), 10, and 11;

(b) KRS 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4); and

(c) KRS 907 KAR 1:645;

(d) KRS 907 KAR 1:650, Section 1(6); [66] and

(e) KRS 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and 4).

(2) A person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for the "SSI" [Supplemental Security Income] Program, an application for the "SSI" [Supplemental Security Income] Program shall be mandatory.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be made to an eligible individual who:

(a) Requires a full-time living arrangement; [and]

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c1) Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age;

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in

   902 KAR 20:036; and

   2. is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in

   902 KAR 20:041; and

2. is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

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(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall return the check to the Kentucky State Treasurer, the month after the month of:
(a) Discharge to:

1. Nursing facility, unless the admission is for temporary medical care as specified in Section 9(1) of this administrative regulation;
2. Residence; or
(b) Death of the state supplementation recipient.

(4) Failure to comply with subsection (3) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to:
   a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9(1) of this administrative regulation;
   b. Another personal care or family care home;
   c. Residence; or
2. Death of the state supplementation recipient; and
(b) Notify a local county department for Community-Based Services Office within five (5) working days of the:
1. Death, or discharge of the state supplementation recipient; or
2. Voluntary relinquishment of a license to the Cabinet for Health and Family Services, Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) and (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult [the individual with an illness or infirmity] to:
(a) Remain safely and adequately:
   1. At home;
   2. In another family setting; or
   3. In a room and board situation; and
(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals by:
(a) A live-in attendant; or
(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified by the cabinet with the caretaker to establish how:
(a) Often the service is provided;
(b) The service prevents institutionalization; and
(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
(a) Client is taken daily or periodically to the home of the caretaker;
(b) Caretaker service is provided by the following persons living with the applicant:
   1. The spouse;
   2. Parent of an adult or minor child who has a disability; or
   3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:
(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and (34);
(b) [] 907 KAR 1:645;
(c) [] 907 KAR 1:850, Section 1(6); [65]; and
(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:
(a) $2000 for individual; or
(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:
(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);
(b) [] 907 KAR 1:645;
(c) [] 907 KAR 1:650, Section 1(6); [65] and
(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:
(a) Adding:
1. Total countable [net] income of the applicant or recipient, or applicant or recipient and spouse; and
2. A payment made to a third party on [in] behalf of an applicant or recipient; and
(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:
(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
(b) Conserved in the amount of one-half (1/2) of the SSI [Supplemental Security Income] Program standard for an individual for:
1. Himself; and
2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI [Supplemental Security Income] Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9) For a resident in the Elderly Shelter Network Program, if:
(a) Income and resources of the spouse shall be disregarded for the month of separation; [and]
(b) A third-party payment on behalf of an applicant or recipient made by the Elderly Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:
(a) A resident of a personal care home made on or after January 1, 2004, $1,004 [2003, $992];
(b) A resident of a family care home made on or after January 1, 2004, $736 [2003, $724];
(c) Caretaker:
1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2004, $826 [2003, $814];
2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2004, $915 [2003, $898]; or
3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2004, $961 [2003, $944].

(2) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
(b) One-half (1/2) of the deficit shall be payable to each.
(3) A personal care or family care home shall accept as full
payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility [Institution]. (1) An SSD recipient who receives [a recipient of] optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:
(a) Social Security Administration notifies the department that the admission shall be temporary; and
(b) Purpose shall be to maintain a recipient's home or other living arrangement during a temporary admission to a health care facility.
(2) A temporary admission shall be limited to the following health care facilities:
(a) Hospital;
(b) Psychiatric hospital;
(c) Nursing facility [Confined in];
(i) Hospital;
(ii) Psychiatric hospital;
(iii) Nursing facility;
(b) A recipient's physician certifies the recipient is expected to be medically confined for ninety (90) full consecutive days or less; and
(c) The recipient receives benefits from the Supplemental Security Income Program.
(3) (c2) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:
1. Citizen of the United States; or
2. Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) To the extent funds are available, a personal care home:
(a) May qualify for a quarterly supplement payment of fifty (50) cents per diem;
1. For a state supplementation recipient in their care; and
2. As of the first calendar day of a qualifying month; and
(b) Shall meet the following certification criteria:
1. (a)(ii) Be licensed in accordance with KRS 216B.010 to 216B.131;
2. [b(i)] Care for a resident who has a:
   a. [i] Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;
   b. [ii] Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
   c. [iii] Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
3. [e(i)] Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds;
4. [f(i)] Not be eligible for a payment during the days it received a Type A citation in accordance with KRS 216.557(1) by the Office of Inspector General;
5. [e(ii)] Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
6. [f(i)] Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement; and
7. [g(i)] File an "Application for MI or MR Supplement Program Benefits" with the department [for Community-Based Services] by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.
(a) [4] Quarters shall begin in January, April, July and October.
(b) [b] Unless mental illness or mental retardation supplementation eligibility is discontinued, a new application for the purpose of program certification shall not be required.
(2) A personal care home shall provide the department [for Community-Based Services] with its tax identification number and address as part of the application process.
(3) The department [for Community-Based Services] shall provide a "Notice of Decision to Personal Care Home" to a personal care home following approval or denial of an application.
(4) A personal care home shall:
(a) Provide the department [for Community-Based Services] with a "Monthly Report Form" that:
   [a] The report shall list:
   1. Lists every resident of the personal care home who was a resident on the first day of the month; and
   2. Lists the resident's Social Security number; and
   3. Annotates the form; and
   (b) In order to maintain confidentiality, a personal care home shall annotate the monthly report as follows with a:
   a. [1] Star indicating a resident has a mental illness or mental retardation diagnosis;
   b. [2] Check mark indicating a resident receives state supplementation; and
   c. [3] Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and
   (b) Mail the "Monthly Report Form" to the department postmarked by the fifth working day of the month.
(5) [d(i)] The monthly report shall be submitted by the department for:
1. Verification as specified in subsection (d)(a) of this subsection:
2. Payment; and
3. Audit purposes.
(d) The monthly report shall be postmarked to the Department [for Community-Based Services] by the fifth working day of the month.
(6)(a) [d(i)] A personal care home shall notify the department [for Community-Based Services] if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.
(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Training. (1) A personal care home's licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.
(2) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.
(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:
(a) Importance of proper medication administration;
(b) Side affects and adverse medication reactions with special attention to psychotropics;
(c) Signs and symptoms of an acute onset of a psychiatric episode;
(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;
(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and
(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.
(3) Initial basic training shall:
(a) Include the licensed nurse or the individual who has suc-
cessfully completed certified medication technician training and may include the owner or operator; and
(b) Be in the quarter during which the "Application for MI or MR Supplement Program Benefits" is filed with the department [for Community-Based Services].
(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.
(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the department [for Community-Based Services] an exemption of the five (5) staff maximum, in order to train another staff member.
(b) A personal care home shall have on staff a licensed nurse or individual who;
1. Has successfully completed certified medication technician training;
2. [who];
3. [has] received mental illness or mental retardation basic training; or
4. [is] enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.
(5) The [Cabinet-for-Health-Services.] Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.
(a) Advanced level training shall be provided through a one (1) day workshop.
(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.
(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.
(d) Attendance of an advanced level training workshop shall be optional.
(6) The [Cabinet-for-Health-Services.] Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:
(a) A Certificate to direct care staff who complete the workshop; and
(b) A Listing to the department [for Community-Based Services] of staff who completed the training workshop.
(7) Unless staff turnover occurs as [a] specified in subsection (4)(a) of this section, the department [for Community-Based Services] shall pay twenty-five (25) dollars to a personal care home:
(a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and
(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year [to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program].
(8) Attendance of the basic training workshop shall be optional for a specialized personal care home. Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The [Cabinet-for-Health-Services] Office of the Inspector General, shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program, [1]
(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:
1. May be separate from an annual survey; and
2. Shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months, [1]
(b) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be completed during the annual licensure survey, [1and]
(c) The department [for Community-Based Services] shall notify the [Cabinet-for-Health-Services] Office of Inspector General that the personal care home is ready to be certified.
(2) The Cabinet for Health Services, Office of Inspector General, shall: (a) Observe and interview residents and staff during the certification process; and
(b) Review records to assure the following criteria is met:
1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (3) of this administrative regulation; [provided by the Department for Mental Health and Mental Retardation Services.]
2. The personal care home.
(a) Has [home's] certified staff [is] training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and
(b) Maintains [The personal care home shall maintain] documentation of attendance at the in-service training for all direct care staff.
3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects; and
4. An activity is being regularly provided that [and] meets the needs of a resident.
(a) If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.
(b) An individualized care plan shall not be required for the criteria in clause a of this subparagraph. [To meet this criteria:]
4. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.
(3) The Cabinet for Health Services, Office of Inspector General, shall review the personal care home copy of the training certification prior to performing a [new] record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.
(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification.
(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(20)(a) of this administrative regulation [for Community Based Services, within ten (10) working days].
(6) The cabinet shall receive from the [Cabinet-for-Health-Services] Office of Inspector General, a completed "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within five (5) working days of receipt by the Office of Inspector General [for Community Health Services].
(7) [The Cabinet-for-Health-Services.] Office of Inspector General, shall inform the department [for Community-Based Services] of a personal care home that receives a Type A citation:
(a) Monthly; and
(b) By the fifth working day of each month for the prior month.
(6) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the [Cabinet-for-Health-Services] Office of Inspector General, established in 921 KAR 2:050.
(5) If a criteria for certification is not met, a "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the [Cabinet-for-Health-Services] Office of Inspector General.
Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is disqualified with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.
Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Notice of Decision to Personal Care Home, edition 9/99"
(b) "Monthly Report Form, edition 9/99"
(c) "Application for MI or MR Supplement Program Benefits,

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edition 3/99"; and
(d) “Persons with Mental Illness or Mental Retardation Supp-
lement Program Certification Survey, edition 3/99”.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Cabinet for Families and
Children, 275 East Main Street, Frankfort, Kentucky 40621, Mon-
day through Friday, 8 a.m. to 4:30 p.m.

VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: December 8, 2003 at 4.p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
January 21, 2004, at 9 a.m. in the Health Services Auditorium,
Health Services Building, First Floor, 275 East Main Street, Frank-
fort, Kentucky. Individuals interested in being heard at this hearing
shall notify this agency in writing by January 13, 2004 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. Written comments shall be accepted until February 2,
2004. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lation to: Becky Conner, Cabinet for Families and Children, Office
of the General Counsel, 275 East Main Street, 4th Floor West,
Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-
9126.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes a program for supplemental payments to
persons requiring care in a personal care or family care home or
receiving care in accordance with KRS 205.245.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is needed to establish uniform conditions and
requirements regarding the State Supplementation Program and the
Persons with Mental Illness or Mental Retardation Supplement.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation con-
forms to KRS 205.245 by complying with an agreement with the
Department of Health and Human Services to pass along any
Supplemental Security Income benefit increases to state supple-
mentation recipients.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
tration establishes the State Supplementation Program, it
establishes eligibility requirements and payment standards for
the State Supplementation Program for personal care, family care
and caretaker services.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This administrative regulation will revise the standard of
need for all levels of care for the State Supplementation Program
due to the pass along of the 2004 Supplemental Security Income
cost of living adjustment.
(b) The necessity of the amendment to this administrative regu-
lation: It is necessary to amend this administrative regulation
due to the mandated pass along of the 2004 Supplemental Secu-
ritary Income cost of living increases for eligibility determinations
made on or after January 1, 2004.
(c) How the amendment conforms to the content of the
authorizing statutes: The amendment to this administrative regu-
lation conforms to KRS 205.245 by complying with an agreement with
the Department of Health and Human Services to pass along any
Supplemental Security Income benefit increases to state sup-
plementation recipients.
(d) How the amendment will assist in the effective administra-
tion of the statutes: This amendment changes the standard of
payments for all levels of care for the State Supplementation Pro-
gram.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: As of October 2003, there were approximately
4,651 recipients of state supplementation benefits who will be af-
fected by the increase in the state supplementation standards due
to the mandate of cost of living adjustment. There are approximately
204 personal care homes and 152 family care homes. The in-
creased standard will help cover the cost of care for the aged, blind
and disabled residing in personal care and family care homes and
help prevent them from being institutionalized.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: Kentucky
entered into a binding agreement with the federal government to
maintain a supplemental program on September 21, 1977. Failure
to maintain this program will result in Kentucky becoming ineligible
for Medicaid payments under Title XIX of the SSA in accordance
with 20 C.F.R. 416.2009. The State Supplementation Program,
although 100% general funds, is extremely costly effective for Ken-
tucky. The average monthly cost is $335 to maintain aged and
disabled individuals in personal care homes, $335 in family care
homes, or in their own home. The cost of providing personal care services in
a nursing facility setting funded by Medicaid is approximately
$35,000 vs. $4,000 for state supplementation per year. In addition,
the elimination or reduction of community placements funded by
state supplementation could jeopardize Kentucky's compliance
with the Federal Omnibus Court decision.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There will be a cost of $155,700 for the first year to
the Cabinet for Families and Children to implement the mandated
pass along of the 2004 SSI cost of living increases. This increase
was included in the Cabinet SFY 2004 enacted budget.
(b) On a continuing basis: There will be a cost of $379,400 to
the Cabinet for Families and Children on a continuing basis to
implement the mandated pass along of the 2004 SSI cost of living
increases.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Gen-
eral Funds/Agency 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: The annual
pass through of the SSI cost of living increase is absorbed within
the existing state supplementation budget.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees.
(9) TIERING: Is tiering applied? Tiering was not applied since
application of policy is applied in a like manner for all state supple-
mentation recipients as set forth through an agreement with the
Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mand-
ate. 20 C.F.R. 416.2095 and 416.2096.
2. State compliance standards. This amended administrative
regulation includes the 2004 cost of living increases to place
Kentucky in compliance with federal Supplemental Security Income
guidelines.
3. Minimum or uniform standards contained in the federal
mandate. This administrative regulation is needed to comply with
the agreement the Commonwealth of Kentucky has with the De-
partment of Health and Human Services to pass along any cost of
living increases in Supplemental Security Income benefits to state
supplementation recipients.
4. Will this administrative regulation impose stricter require-
ments, 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 STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 6.010. State-based administrative complaint procedure.

RELATES TO: KRS 117.015(1), 42 U. S.C. 15511
STATUTORY AUTHORITY: KRS 117.015(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Help America Vote Act of 2002, Pub.L. 107-252, Section 402(a), requires the establishment of a state-based administrative complaint procedures to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.
(2) "Complainant" means the person who files a complaint under this administrative regulation.
(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.
(4) "Presiding officer" means the person appointed by the board to conduct a hearing on a complaint.
(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002.
(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III of the Act by any election official may file a written complaint with the board.
(2) All complaints shall:
(a) Be limited to violations of the requirements placed upon the states by Title III, specifically:
1. Standards for voting systems;
2. Requirements for provisional voting and voting information; and
3. Requirements for computerized statewide voter registration lists and for voters who register by mail.
(b) Be in writing on the form prescribed by the board and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.
(c) Include the full name, address, and telephone number of the complainant.
(d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specifics of the complaint.
(e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.
(f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation, except the board shall dismiss a complaint that does not state on its face a violation of Title III.
(2) If a complaint does not comply with Section 3 of this administrative regulation the board shall, within three (3) days, send the complainant a notice explaining the areas of noncompliance in the complaint.
(3) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.
(4) Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.
(5) The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.
(6) Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or a hearing may be requested. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.
(7) The executive director of the board shall be responsible for arranging the date, time and place for hearings.
(8) The board may consolidate multiple complaints into a single proceeding if feasible where the complaints arise out of the same fact situation and have common questions of law and facts.
(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.

Section 5. Hearings. (1) Hearings shall be conducted in accordance with KRS Chapter 13B.
(2) Hearings shall be tape recorded and no transcript of the hearing shall be made except: upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at their own expense.
(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.
(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.
(5) All testimony shall be taken under oath or affirmation.
(6) The complainant has the burden of proof.

Section 6. Final Determination. (1) If the presiding officer determines that there was a past, present, or potential violation of Title III, then the final determination shall set forth the facts of the violation, the specific violation of Title III, and provide a remedy.
(2) The remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.
(3) The remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III.

Section 7. Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.
(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.
(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.
(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 8. Publication of Final Determinations. (1) All final determinations shall be posted on the internet homepage of the board and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.
Section 9. Incorporation by Reference. (1) Complaint form for Title III Violations - SBE 21(12/03).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.

JOHN Y. BROWN III, Chair
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: December 5, 2003 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2004, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 2004, 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 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 March 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Sue Helm, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100; fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary Sue Helm

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements placed upon the states by Section 402(a) of the Help America Vote Act of 2002, Pub.L. 107-252, for a state-based administrative complaint process for elections for federal office.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Section 402(a) of the Help America Vote Act of 2002 and to qualify for federal election assistance payments to the state and units of local government under Parts 1 and 2 of subtitle D of the Act and the state plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides an administrative process for complaints by citizens who believe that a violation of any provision of Title III of the Help America Vote Act of 2002 has occurred, is occurring, or is about to occur. This process helps assure that voters will have better access to the polls and an efficient mode to cast their ballot in elections for federal office.
(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 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, organizational, or state and local governments affected by this administrative regulation: All eligible voters, all candidates for federal office, all political parties, all election officials and boards, and all vendors of voting systems.

(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 for the requirements for the state-based complaint process for elections for federal office.

(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are costs associated with printing and distributing the complaint form and training election officials. These costs shall be paid from existing budgets for FYE 2003, and federal payments.
(b) On a continuing basis: There are costs associated with conducting hearings under KRS Chapter 13B. These costs consist of fees for the hearing officer and the expense of recording the hearing.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state funds appropriated to the State Board of Elections and federal funds under the Help America Vote Act.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding may be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all voters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 15512
2. State compliance standards. KRS 117.015(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 15512.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)
31 KAR 6:020, Provisional voting.

RELATES TO: KRS 117.015(1), 42 U.S.C. 15482
STATUTORY AUTHORITY: KRS 117.015(1)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to comply with the requirement of the Help America Vote Act of 2002, Pub.L. 107-252, Section 302, for provisional voting in elections for federal offices.

Section 1. Applicability. This administrative regulation shall be applicable to special, primary and general elections for the federal elective offices of President/Vice President, United States Senator and United States House of Representatives.

Section 2. Definitions. (1) Provisional ballot means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.
(2) Provisional ballot outer envelope means the envelope with the following printed on the front: (a) Precinct election official checklist of circumstances for issuing a provisional ballot; (b) Provisional ballot affirmation; and (c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.
(3) Provisional ballot inner envelope means the envelope with the words "provisional ballot" printed on the front.

Section 3. Precinct Election Officer Notice. (1) A precinct elec-
tion officer, who cannot confirm a potential voter's eligibility to vote on election day, shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or vote a provisional ballot in that precinct provided they reside at a residence within the geographical boundaries of the precinct.

(2) If the individual chooses to cast a provisional ballot, then they shall not be eligible to vote in any other manner.

Section 4. Procedures for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster prescribed by the State Board of Elections, which contains the individual's Social Security number, name, address, signature, date of birth, and political party affiliation.

(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.

(3) The circumstances for issuing the provisional ballot:

(a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;

(b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;

(c) Voter who does not have identification;

(d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours;

(e) Voter has been challenged by all four (4) precinct election officers; or

(f) Other.

(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope and the provisional ballot outer envelope.

(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the polling place declaring they are a registered voter in the county and reside within the geographical boundaries of said precinct. The written affirmation executed by the individual shall state:

(a) Their name;

(b) Current residential address;

(c) Political party affiliation;

(d) That they are a registered voter in the county and reside in the precinct;

(e) That they know of no legal reason to prevent their vote from being cast and counted;

(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;

(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and

(h) That the individual further understands that if they execute the affirmation and are not a registered voter at the current address stated, they have committed a criminal act.

(6) The precinct election officer shall direct the individual to a private voting area in which they shall cast their provisional ballot.

(7)(a) An individual may spoil up to two (2) provisional ballots and shall be issued no more than a total of three (3) provisional ballots.

(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".

(8) The individual shall place the voted provisional ballot in the provisional ballot outer envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.

(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.

(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet prescribed by the State Board of Elections, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted the reason why.

(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.

(12) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.

(13) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.

(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.

(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.

(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.

(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the recanvass of official count and record of election totals prescribed by the State Board of Elections, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot.

(7) A minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to their findings, the county clerk shall photocopy the face of each outer envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted the reason why.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballots and all envelopes from a primary or special election shall be kept for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots prescribed by the State Board of Elections shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots
spoiled and place for the signature of all four (4) precinct election officers.
(11) County boards of election shall instruct precinct election officers as to who is eligible to vote a provisional ballot and the proper procedures.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Provisional Ballot Precinct Signature Roster—SBE 35 (11/03);
(b) Provisional Ballot Informational Sheet—SBE 36 (11/03);
(c) Provisional Ballot Accountability Sheet—SBE 37 (11/03);
(d) Provisional Ballot Outer Envelope—SBE 38 (11/03);
(e) Provisional Ballot Inner Envelope—SBE 39 (11/03);
(f) Certification Official Count and Record of Election Totals—SBE 49 (11/03); and
(g) Recanvass of Official Count and Record of Election Totals—SBE 49A (11/03).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN Y. BROWN III, Chairman
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: November 26, 2003 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 29, 2004, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 22, 2004, 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 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 January 31, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Sue Helm, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601; phone (502) 573-7100; fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary Sue Helm
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation implements the requirements placed upon the states by the Help America Vote Act of 2002, Pub.L. 107-252, Section 302, codified at 42 U.S.C. 15482, allowing voters in an election for federal office to cast a provisional ballot when their name does not appear on the precinct list of eligible voters or when their eligibility to vote has been challenged.
(b) The necessity of this administrative regulation: To assure conformity with federal law in elections for federal office.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the State Board of Elections to enact administrative regulations necessary to administer the election laws of the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Describes the procedures for casting provisional ballots to be filed by county clerks, precinct election officers, and voters.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(3) How the amendment will assist in the effective administration of the statutes: Informs those who desire to vote in an election for federal office when their name does not appear on the precinct voting list or when their eligibility to vote has been challenged.

(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 an amendment: Election officials and voters will have to follow the procedures to implement provisional voting.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Unknown
(b) On a continuing basis: Unknown
(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: Grants of federal funds received by the State Board of Elections under the Help America Vote Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: There shall be no increase in fees is anticipated or needed. Initially, federal funding for the grants under the Help America Vote Act should suffice. There will be paper and printing costs for the forms required by this administrative regulation.

(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 affected parties are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15482.
2. State compliance standards. KRS 117.015(1).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

TRANSPORTATION CABINET
Department Of Vehicle Regulation
(Repealer)

601 KAR 11:061. Repeal of 601 KAR 11:060. RELATES TO: KRS Chapter 281A, 49 C.F.R. 383.23 STATUTORY AUTHORITY: KRS 281A.270, 49 C.F.R. 383.23 NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation acts specifically to repeal 601 KAR 11:060, Commercial driver's license mandate date. 601 KAR 11:060 was an implementation administrative regulation for commercial driver's licenses to ensure that no operator of a commercial motor vehicle was required to have a commercial driver's license in Kentucky prior to April 1, 1992, the date mandated by the U.S. Department of Transportation, and is no longer necessary.

Section 1. 601 KAR 11:060, Commercial driver's license mandate date, is hereby repealed.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: November 12, 2003 at noon
FILED WITH LRC: December 5, 2003
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
January 21, 2004 at 10 a.m. at the Transportation Cabinet, State Office Building, 10th Floor Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by January 13, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 February 2, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation acts specifically to repeal 601 KAR 11:060, Commercial driver's license mandate date.
(b) The necessity of this administrative regulation: 601 KAR 11:060 is no longer necessary because it was an implementation regulation to ensure that commercial driver's licenses were not required in Kentucky prior to April 1, 1992, the date mandated by the U.S. Department of Transportation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This eliminates an unnecessary administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation's only purpose is to repeal 601 KAR 11:060, Commercial driver's license mandate date.
(2) If 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 is not an amendment.
(b) The necessity of the amendment to this administrative regulation: Refer to Section (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Refer to Section (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to Section (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Refer to Section (1)(h).
(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: Refer to Section (1)(b).
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None, this is a repealer administrative regulation.
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None, this is a repealer 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 no fees and no increases in funding to implement this administrative regulation. This administrative regulation's only purpose is to repeal 601 KAR 11:060, Commercial driver's license mandate date.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation. This administrative regulation's only purpose is to repeal 601 KAR 11:060, Commercial driver's license mandate date.

TRANSPORTATION CABINET
Department of Vehicle Regulation (Repealer)

RELATES TO: KRS 186.450
STATUTORY AUTHORITY: KRS 186.400
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is no longer necessary as the provisions have been incorporated into KRS 186.412 and 186.450.

Section 1. 601 KAR 12:030, Instruction permit, is hereby repealed.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: November 12, 2003
FILED WITH LRC: December 5, 2003 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2004 at 10 a.m. at the Transportation Cabinet, State Office Building, 10th Floor Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by January 13, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 February 2, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation acts specifically to repeal 601 KAR 12:030, Instruction permit.
(b) The necessity of this administrative regulation: 601 KAR 12:030 is not necessary because the provisions have been incorporated into KRS 186.412 and 186.450.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This deletes and unnecessary administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.
(2) If 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 is not an amendment.
(b) The necessity of the amendment to this administrative regulation: Refer to Section (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Refer to Section (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to Section (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Refer to Section (1)(h).
(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: Refer to Section (1)(b).
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None, this is a repealer administrative regulation.
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None, this is a repealer 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 no fees and no increases in funding to implement this administrative regulation. This administrative regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation. This administrative regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.

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regulation: Refer to Section (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Refer to Section (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to Section (2)(a).

(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: Refer to Section (1)(b).

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None, this is a repealer regulation.
(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: None, this is a repealer regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this regulation, if new, or by the change if it is an amendment: There are no fees and no increases in funding to implement this regulation. This regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation. This regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.
(9) TIERING: Is tiering applied? No. This regulation's only purpose is to repeal 601 KAR 12:030, Instruction permit.

TRANSPORTATION CABINET
Motor Vehicle Commission
(New Administrative Regulation)

605 KAR 1:040. Temporary off-site sale or display event.
RELATES TO: KRS 190.010 to 190.990
STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.073
NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee therefore". KRS 190.030 also allows off-site temporary motor vehicle sales or displays under certain conditions.

Section 1. KRS 190.030 requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary sale or display of motor vehicles at a location other than the licensed place of business under certain conditions.

Section 2. A motor vehicle dealer shall not conduct or participate in a motor vehicle sale or display event at any location other than the dealer's licensed place of business unless an application for a temporary sale or display permit is filed with the licensor a minimum of five (5) days prior to the next regularly-scheduled meeting of the licensor before the requested permit period, and unless such application is approved by the licensor. The permit application shall state the duration of its validity, which in no event shall exceed five (5) successive days, the specific location for which the permit is requested, and shall be accompanied by proof that the city, county, urban county or consolidated local government where the temporary sale or display event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle sale or display event in its jurisdiction but at a location other than the dealer's licensed place of business. In addition, the permit application shall verify that the off-site sale or display event has been, is being, or will be advertised as being temporary in nature, and that the event will include a representative sampling of the inventory of the participating dealer(s).

Section 3. The fee for a temporary sale event permit shall be $100 per participating dealer.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 15, 2003
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 27, 2004 at 10 a.m., EST, at the office of the Motor Vehicle Commission, 403 Wapping Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 403 Wapping Street, Frankfort, Kentucky 40622, phone (502) 564-3750, fax (502) 564-3750.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: David Garnett, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: The Kentucky Motor Vehicle Commission ("Commission") licenses and regulates all motor vehicle dealers in Kentucky. Motor vehicle dealers are required by KRS 190.030 to confine the display and sale of motor vehicles to a dealer's licensed place of business. However, this statute also provides authority for a dealer to engage in the business of a dealer at certain other locations. This proposed regulation requires Kentucky motor vehicle dealers to provide to the commission proof of compliance with statutory requirements before engaging in a motor vehicle sale or display event at any location other than the dealer's licensed place of business. A dealer seeking to display or sell motor vehicles at any location other than his licensed place of business will be required by this proposed administrative regulation to provide the following to the commissioner:
1. Proof that the governmental body having primary jurisdiction over the sale or display event has enacted an ordinance that specifically allows a motor vehicle dealer to sell or display motor vehicles in its jurisdiction, at a location other than the dealer's licensed place of business;
2. Verification that the sale or display event is advertised as being temporary in nature;
3. Verification that the sale or display event will include a representative sampling of the inventory of the participating dealer(s); and
4. A fee of $100 for each participating dealer. KRS 190.030 (7) describes such sale or display events as being "temporary". The proposed regulation limits the duration of a temporary motor vehicle sale or display event to no more than 5 successive days, consistent with 605 KAR 1:170, Temporary sale or display event license for a Motor Vehicle Dealer Trade Association.
(b) The necessity of this administrative regulation: The need for the regulation is shown by the number of violations that have come before the commission since the effective date (June 25, 2003) of an amendment to KRS 190.030 that prohibits a Kentucky motor vehicle dealer from engaging in business at any location other than the dealer's licensed place of business. The statutory amendment allows a motor vehicle dealer to engage in a temporary motor vehicle sale or display event at a location other than the licensed place of business if certain conditions are met. Chief among these is a requirement that the city, county, or other entity having primary jurisdiction over a location where a temporary motor vehicle sale or display event is to be held must first enact an ordinance allowing such activities. Many jurisdictions already have in place ordinances that provide for the issuance of business licenses to itinerant or transient merchants. Many jurisdictions have considered these
transient merchant ordinances as meeting the requirement, set forth in KRS 190.030(7), of an ordinance permitting motor vehicle sale or display events at locations other than a dealer's licensed place of business. However, these transient merchant ordinances do not meet the statutory requirement of an enabling ordinance for the following reasons: 1. They were not enacted in contemplation of the statutory amendment. 2. They may not address the specific issue of allowing temporary motor vehicle sale or display events at locations other than licensed places of business; and 3. The statutory amendment to KRS 190.030 was designed to require the enactment of enabling ordinances for temporary motor vehicle sale or display events so that motor vehicle dealers in a particular jurisdiction would have an opportunity to provide comment on such an ordinance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is being promulgated pursuant to KRS 190.020 and 190.073. The latter states that the commission "shall promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The promulgation will assist in the effective administration of the provisions of KRS Chapter 190 by clarifying the requirements for compliance therewith.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment to an existing administrative 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 contents 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 regulation:
The entities affected by the promulgation of the administrative regulation will be the approximately 3,700 retail motor vehicle dealers licensed in Kentucky, and each city, county, or other governmental entity which agrees to consider the enactment of an ordinance on the subject of motor vehicle sale or display events.

(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 existing statute (KRS 190.030) requires each motor vehicle dealer who wishes to conduct a display or participate in a motor vehicle sale or display event at a location other than the dealer's licensed place of business to comply with its provisions. The proposed regulation merely requires proof or verification of that compliance by dealers. The governing body of each city, county, or other jurisdiction in Kentucky may be requested to consider and enact an ordinance allowing motor vehicle sales or display events at locations other than a dealer's licensed place of business.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to a dealer who sells or displays motor vehicles at his licensed place of business. Dealers who participate in a sale or display event at a location other than the licensed place of business will be charged a one-time permit fee of $100 for each such event. The cost to cities, counties, and other jurisdictions would be the normal expenses associated with drafting and enacting an ordinary ordinance. Costs to the agency in receiving, reviewing, and verifying applications are negligible and will be offset by the $100 permit fee.
(b) On a continuing basis: See response to (5)(a), above.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Motor Vehicle Commission operates exclusively from the license fees it collects from motor vehicle dealers, manufacturers and salespersons; it receives no General Fund or road fund appropriation. The commission's costs in implementing the proposed administrative regulation are only those associated with normal personnel time invested in drafting and filing the regulation and attending the hearings. The commission's costs associated with enforcing the proposed administrative regulation will be passed on to dealers by way of the permit fee specified in the regulation, and monetary penalties assessed for violations of the regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes a fee at the rate of $100 for each motor vehicle dealer who wishes to conduct or participate in a motor vehicle sale or display event held at a location other a dealer's licensed place of business. This fee is consistent with the fee charged under a similar administrative regulation, 505 KAR 1:170, promulgated in 1988.

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 administrative regulation may affect every city, county, urban county, and consolidated local government in Kentucky. This administrative regulation does relate to an aspect of a local government, including a service provided by that local government, but only to the extent that a motor vehicle dealer who wishes to engage in the business of a motor vehicle dealer at a location other than his licensed place of business can do so only in a city, county, or other jurisdiction that has enacted an ordinance that specifically allows motor vehicle sales or display events to be conducted in that jurisdiction at a location other than a dealer's licensed place of business.

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 services or authorizes the action taken by the 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. This administrative regulation is not expected to have any effect on the revenue of a local government. The administrative regulation is expected to affect expenditures of a local government only to the extent that drafting and considering an enabling ordinance requires certain resources, such as the use of personnel and supplies. As these functions are already a primary function of a local government entity, any expenditure incurred by reason of the administrative regulation is negligible.
Section 1. Definitions. (1) "A1 school" means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making council. An A1 school is not a program operated by, or as a part of, another school.

(2) "A2 school" means a district-operated, totally vocational-technical school, where the membership is counted in other schools.

(3) "A3 school" means a district-operated, totally special education school.

(4) "A4 school" means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).

(5) "A5 school" means an alternative school which is a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 schools typically include:

- Actual dropouts returning to an alternate educational environment;
- Potential or probable dropouts;
- Drug abusers;
- Physically abused students;
- Discipline problem students;
- Nontraditional students (e.g., students who have to work during the school day);
- Students needing treatment (e.g., emotional/psychological).

(6) "A6 school" means a district-operated instructional program in a nondistrict-operated institution or school.

(7) "A2-A6 school" means a school which is classified as A2, A3, A4, A5, or A6.

(8) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(B).

(9) "Accountability index" means the statistic defined in KRS 158.6457(1).

(10) "Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).

(11) "Adequate yearly progress in both reading and mathematics" means required performance of each school or district in obtaining:

- Annual measurable objectives in reading and mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq;
- A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;
- A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and
- The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(12) "Adequate yearly progress in reading" means required performance of each school or district in obtaining:

- Annual measurable objectives in reading in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq;
- A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;
- A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and
- The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(13) "Alternate portfolio" means that component of the assessment system designed for students with legally-identified disabilities who cannot with the assistance of available accommodations, modifications, or both participate in the regular curriculum.

(14) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(15) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014, with the calculated points redefining this line rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(16) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number
against which progress on the accountability index shall be measured.

(16) "Comprehensive school improvement plan" means a data driven and research-based framework developed by the school which contains specific recommendations from the school's audit team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(19) "Confidence interval" means a range of scores determined for which there is a designated percent confidence that a school or district score falls within this range.

(20) "District evaluation team" means one (1) or more school-based audit teams as established in 703 KAR 5:120.

(21) "Full academic year for a district" means a district is accountable for any student who is enrolled in the district any 100 instructional days from the district's first instructional day of the school year through the first day of the testing window for the appropriate accountability level established by the district.

(22) "Full academic year for a school" means a school is accountable for any student who is enrolled in the school any 100 instructional days from the first instructional day of the school year through the first day of the testing window.

(23) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(24) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement above the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(25) "Graduation rate" means the quotient of: [number of current year grade 12 completers (standard diploma within four (4) years, including students with disabilities whose IEP's stipulate they will need more than four (4) years to obtain a standard diploma)] divided by [number of current year grade 12 completers (includes standard diplomas plus certificates of completion), plus the number of current year grade 12 dropouts, plus the number of dropouts from the current 12th grade that dropped out as 11th graders, plus the number of dropouts from the current 12th grade class that dropped out as 10th graders, plus the number of dropouts from the current 12th grade class that dropped out as 9th graders].

(26) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(27) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(28) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(29) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(30) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(31) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(32) "No child left behind improvement school or district" means a school or district that fails to make adequate yearly progress for two (2) consecutive years in the same content area, reading or mathematics.

(33) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.645(1)(c), (d), and (f).

(34) "Participation in state-required assessments" means making a good faith effort by completing four multiple-choice items or responding to at least one constructed-response item in the reading and mathematics assessments combined for the appropriate grade level.

(35) "Participation rate" means the percent of students who participated in the state-required assessments.

(36) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(37) "Reward share" means the unit of money as appropriated by the General Assembly to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(38) "Safe harbor" means for a school or district that has not met the reading or mathematics annual measurable objective, that the school or district is considered to have met the objective in reading or mathematics if the school or district reduces its percent of total students or subpopulation(s) (whichever group(s) did not meet the reading or mathematics annual measurable objective), scoring below proficient by ten (10) percent; and students in the same population or subpopulation(s) demonstrate improvement or obtain a 100 or higher on the prior year academic index.

(39) "Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

(40) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(41) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth as defined in 703 KAR 5:020.

(42) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The comprehensive school improvement plan;
(b) State assessment results;
(c) Federal accountability results;
(d) Student achievement data;
(e) Portfolio writing analysis data;
(f) School survey data;
(g) The school report card;
(h) District technology inventory;
(i) School handbook and master schedule;
(j) School-based decision-making policies and meeting minutes;
(k) Teacher lesson plans;
(l) District evaluation plan;
(m) Curriculum alignment documents;
(n) Examples of student work; and,
(o) A listing of professional development activities.

(43) "School recognition points" means accountability index scores of fifty-five (55), sixty-six (66), seventy-seven (77), eighty-eight (88), and 100 on the accountability index scale used to recognize school standing.

(44) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(45) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(46) "Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing comprehensive school and district improvement plans.

(47) "Standing of a school" means the actual performance of a school as measured by the accountability index.
"State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

"Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

"Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state’s proficient level of achievement on state assessment and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who:

(a) Is age three (3) to twenty-one (21);
(b) Is enrolled or preparing to enroll in an elementary school or secondary school;
(c) Was not born in the United States or, whose native language is a language other than English;
(d) Comes from an environment in which a language other than English has had a significant impact on the individual’s level of English language proficiency;
(e) Is Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the student’s level of English language proficiency; or
(f) Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant.

"Sufficient size for calculating participation rates" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least sixty (60) students in the subpopulation in these grades combined.

"Sufficient size for making comparisons to annual measurable objectives" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least thirty (30) students in the subpopulation in these grades combined.

"Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

"Testing window" means a period of time designated annually by the Kentucky Department of Education within which all state-required assessment shall be administered.

"Title I school or district" means a school or district eligible for and receiving Title I funds.

"Writing portfolio score" means the score assigned by teachers, or score reassigned through portfolio scoring audit procedures, to a collection of a student’s best work.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Nolan, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Nolan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Kentucky’s Assessment and Accountability Program.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6453, KRS 158.6455 and the “No Child Left Behind Act of 2001”, 20 U.S.C. 6301 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides definitions for Kentucky’s assessment and accountability program as required by KRS 158.6453, KRS 158.6455 and the “No Child Left Behind Act of 2001”, 20 U.S.C. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides common definitions for implementation of regulations included in 703 KAR Chapter 5 which will be applied in all schools and districts.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(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: Local school district staff will be provided common definitions for terms needed in the implementation of the state-required assessment and accountability programs.

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

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

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local school districts.
EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)


RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment program. This administrative regulation establishes test administration procedures.

Section 1. Test Administration Procedures. (1) Retained students. A student retained in a grade in which state-required assessments exist until the year the student shall participate in the assessments is required to be in all accountability calculations. A high school senior taking more than four (4) years to complete high school shall repeat grade twelve (12) state-required assessments.

(2) Double or multiple grade promotions and state-required assessments. If a student is double promoted or otherwise placed in a grade in the normal progression of grades primary through twelve (12), the student shall take the state-required assessments associated with the grade being skipped. A student shall be included in participation rate calculations of the current grade placement of the student at the beginning of the testing window.

(3) Norm referenced test requirements and end of primary students.

(a) An exiting primary student shall take the nationally norm-referenced assessment and any additional assessments that may be required as a part of the Commonwealth Accountability Testing System.

(b) If a school is certain that a student will continue in the primary program and the student's parents have been informed, then the student shall not be required to take the nationally norm-referenced assessment or other state-required assessment components until the student exits the primary program.

(c) If school personnel are not sure that a student will remain in the primary program when the nationally norm-referenced assessment and any other assessments that may be required as a part of the Commonwealth Accountability Testing System are administered, the student shall take the test. If the student remains in the primary program for an additional year, the student shall retake state-required assessments in the year the student exits the primary program.

(4) Students not participating in state-required assessments.

(a) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall complete and submit to the testing contractor all general and demographic background data fields regarding the student.

(b) A student who does not take the Kentucky core content tests or the nationally norm-referenced test shall be assigned novice nonperformance scores on the appropriate test.

(c) A student who does not submit a required portfolio, either writing or alternate, shall be scored novice nonperformance.

(5) Students twenty-one (21) years of age or older. A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(6) Expelled students.

(a) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in calculations necessary for either federal or state accountability procedures.

(b) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments and shall be included in the participation rate calculation.

(c) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the participation rate calculation.

(7) Medical exemption.

(a) If participation in the state-required assessment would jeopardize a student's physical, mental or emotional well being, a school or district shall submit a request for medical exemption, which is subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from all or portions of the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption shall be excluded from state-required assessments and state and federal accountability calculations.

(8) Foreign exchange students. A foreign exchange student may be assessed with state-required assessments, but the foreign exchange student scores shall not be included in the school or district federal and state accountability calculations.

(9) Dropout status and assessment requirements.

(a) A student who drops out of school prior to the testing window shall be included in the school's nonacademic only.

(b) For purposes of calculating percent proficient and above for reading and mathematics and the academic index components of Kentucky's academic and accountability indices, a student who drops out of school and who is maintained on a sixty (60) day waiting list for confirmation shall not be included.

(c) The roster shall include an annotation indicating the date the student is notified of the student dropping out of school.

(10) State and federal accountability student roster.

(a) A school shall test all students enrolled in each accountability grade on the first day of the school's testing window and shall provide Kentucky's testing contractor with a roster of these same students. The roster shall include:

1. The district and school names and code numbers;
2. Grade;
3. Each student's name;
4. Whether the student has completed a full academic year in the school, in the district, or in the state; and
5. Whether the student participated in state-required assessments.

(b)1. For purposes of calculating a school's academic indices in the state dimension and for determining adequate yearly progress in the federal dimension, each school shall be held accountable based on an aggregated average of the academic performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades, and each district shall be held accountable based on an aggregated average of the academic performance of the elementary, middle, or high school students who have been enrolled in the district for a full academic year in the accountability grades.

2. If a school or district has a different announced testing window and a student is enrolled in more than one (1) school or district during this period, the student shall be attributed for state and federal academic accountability calculations purposes to the school or district having the earliest announced testing window.

3. If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from state and federal academic accountability calculations.

(11) Enrolling transient students. A school receiving a transfer student from another school just prior to or during the testing window shall not deny or delay enrollment of that student without legally valid reasons.

(12) Adjustments to testing window due to natural disasters. A district or school that experiences a natural disaster or calamity during their chosen testing window option may request an adjustment to the testing window. The request shall be made by email or letter to the Kentucky Department of Education Office of Assessment and Accountability.
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Section 2. Portfolios. (1) Writing and alternate portfolio completion date. A student entry into and all substantive work on the writing and alternate portfolio shall be completed on or before the first day of the testing window in the school where the student is enrolled. At the discretion of the district, this date may be set earlier in the school year. A school using a modified or alternative block scheduling may follow a different routine for portfolio development if the school submits a request to the Kentucky Department of Education, Office of Assessment and Accountability, and it is approved.

(2) Portfolio scoring. Before scoring the alternate or writing portfolio, a teacher shall participate in annual training by the Kentucky Department of Education or the department’s designee. If a school does not participate in this scoring training, the school shall be responsible for securing the scoring services of appropriately-trained portfolio scorers.

(3) Writing portfolio scoring timelines and postadministration assessment administration activities. Local scoring of writing portfolios and other local logistics required after test administration shall be completed by the date set by the local district assessment coordinator. The local district shall establish these schedules so that all materials are shipped to Kentucky's assessment contractor by the dates established annually by the Kentucky Department of Education.

(4) Portfolio rescoring and audit procedures. A school and district shall cooperate fully in alternate and writing portfolio monitoring and auditing as implemented by the Kentucky Department of Education.

(5) Alternate and writing portfolios storage. A school shall store its alternate and writing portfolios in a location that is accessible to the district assessment coordinator or the district assessment coordinator’s designee. A portfolio shall be stored until the portfolio no longer impacts data on a potential appeal of a performance judgment.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 159.070(4).

GENE WILHOIT, Commissioner
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2004, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes administrative procedures necessary to implement the state-wide assessment and accountability program as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to provide administrative procedures for implementing provisions of KRS 158.6453, KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the authorizing statute by providing administrative procedures for the state-wide assessment and accountability programs as required by KRS 158.6453, KRS 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including producing student rosters, testing particular students, medical exemptions, testing windows, and portfolio scoring and audits.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the administrative procedures for the implementation of the state-wide assessment and accountability programs which will be applied in all schools across the state.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment.
(b) The necessity of the amendment to this administrative regulation: This is not an amendment.
(c) How the amendment conforms to the content of the authorizing statute: This is not an amendment.
(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.
(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: School staff will be provided the administrative procedures for implementing the state-required assessment and accountability programs.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional costs to the agency to continue the implementation this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 12:002. Definitions for 808 KAR Chapter 12.

RELATES TO: KRS 294.010(1), 294.020(1)(a)
STATUTORY AUTHORITY: KRS 294.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. This administrative regulation establishes defi-
Section 1. Definition. "Control" means the power to vote twenty-five (25) percent or more of any class of voting stock of the company.

ELLA D. ROBINSON, Commissioner
JANIE A. MILLER, Secretary

APPROVED BY AGENCY: November 26, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 28, 2004, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 21, 2004, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3590 ext. 235, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sally Taylor

(1) Provide a brief summary of:
(a) What this administrative regulation does: It defines the term "control" as it relates to affiliates.
(b) The necessity of this administrative regulation: This regulation is necessary to determine when an "affiliate" of a financial institution is exempt from 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.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 294.010(1) authorizes the commissioner to promulgate regulations necessary to accomplish the basic purposes of KRS Chapter 294. The term "affiliate" is defined in the statute as "any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person." By defining the term "control," this regulation clarifies the term as it appears in the definition of the term "affiliate" in KRS 294.010(1).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: It will provide the industry with express guidelines on what constitutes an affiliate of a financial institution for purposes of determining whether the affiliate qualifies for an exemption from licensing.
(2) If 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 statute: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All financial institutions and their affiliates that are exempt from licensing will be affected by this 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: Because this regulation is merely a codification of existing agency interpretation, there is expected to be no real impact on the operation of licensees.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing budget already provides the necessary funding to be used for the implementation and enforcement of this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or assessments will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this regulation.
(9) TIERING: Is tiering applied? The statutory requirements are applicable to all exempt financial institutions and their affiliates and, accordingly, tiering does not apply.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 12:065. Disclosure for lender/broker making less than five (5) loans per year.

RELATES TO: KRS 294.020(2)(e)
STATUTORY AUTHORITY: KRS 294.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. KRS 294.020(2)(e) exempts any person making less than five (5) mortgage loans per year from the provisions of KRS Chapter 294 and requires that person to notify the department of each loan made in a written form prescribed by the department. This administrative regulation establishes the procedure for notifying the department of each loan transaction when a person makes less than five (5) mortgage loans per year.

Section 1. A person relying on an exemption under KRS 294.020(2)(e) shall submit a Disclosure For Lender/Broker Making Less Than Five Loans Per Year for each loan transaction.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELLA D. ROBINSON, Commissioner
JANIE A. MILLER, Secretary

APPROVED BY AGENCY: November 26, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 28, 2004, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 21, 2004, 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. 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
be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 235, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sally Taylor

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes a procedure for reporting loan transactions for persons makes less than 5 mortgage loans per year.

(b) The necessity of this administrative regulation: This regulation is necessary in order to comply with the provisions of KRS 294.020(2)(e) which requires persons making less than 5 mortgage loans per year to report each loan made in a written form that is prescribed by the department.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 294.010(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. This administrative regulation establishes the procedure for reporting mortgage loans for persons who makes less than 5 mortgage loans per year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes a form for reporting mortgage loans for persons making less than 5 mortgage loans per year.

(2) If 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 persons that are exempt from licensing because they make less than 5 mortgage loans per year 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: Persons who are exempt from licensing because they make less than 5 mortgage loans per year will be required to report each loan.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing budget already provides the necessary funding to be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this regulation.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all exempt persons who make less than 5 mortgage loans per year and, accordingly, tiering does not apply.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 12:075. Requirements of mortgage broker residence office.

RELATES TO: KRS 294.032(7)

STATUTORY AUTHORITY: KRS 294.140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. KRS 294.032(7) relates to mortgage loan broker license applications, and license application renewals, and requires information on the location of the physical office, and if the office is a residence, requires proof that the mortgage loan broker owns or leases the residence and lives in the residence as the broker's main residence. This administrative regulation establishes requirements of ownership if the office is a residence.

Section 1. If the physical office is a residence, the office shall be the residence of an owner who owns at least twenty (20) percent of the applicant. The application shall include a signed, notarized letter from the owner of twenty (20) percent or more of the applicant, stating that the office is the main residence of the owner, a copy of the deed or lease, and a letter from the local zoning board stating that the requirements for an in-home office have been met.

Ella D. Robinson, Commissioner

JANIE A. MILLER, Secretary

APPROVED BY AGENCY: November 25, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 28, 2004, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 21, 2004, 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. 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 be heard at the public hearing and you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 235, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sally Taylor

(1) Provide a brief summary of:

(a) It establishes requirements of ownership when the office of a mortgage loan broker is a residence.

(b) The necessity of this administrative regulation: This regulation is necessary to determine what type of ownership is required when the office of a mortgage loan broker is a residence.

(c) How this administrative regulation conforms to the content of the authorizing statutes: When the physical location of a mortgage loan broker is a residence, KRS 294.032(7) requires proof that the mortgage loan broker owns or leases the residence and resides in the residence. This administrative regulation clarifies the requirement of ownership.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will provide the industry with express guidelines on the degree of ownership
that is required when the office of a mortgage loan broker is a residence.

(2) If 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 mortgage loan brokers with the physical location of their businesses in a residence.

(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: Mortgage loan brokers with a business in their residence will have a better understanding of the requirements of ownership.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing budget already provides the necessary funding to be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this regulation.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all mortgage loan brokers with an office in their residency and, accordingly, tiering does not apply.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 12:085. Registration of mortgage loan officer/broker.

RELATES TO: KRS 294.255, 294.265
STATUTORY AUTHORITY: KRS 294.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. KRS 294.255(1) requires all mortgage loan brokers and mortgage loan officers to register with the Department of Financial Institutions in order to originate mortgage loans in Kentucky. This administrative regulation establishes procedures for registration of mortgage loan brokers and mortgage loan officers with the department.

Section 1. (1) An applicant for registration as a mortgage loan broker or mortgage loan officer shall register with the department by filing an "Application for Registration of a Mortgage Loan Officer or Mortgage Loan Broker" form with the department.
(2) An applicant shall agree to an FBI criminal background check in compliance with KRS 294.090.

Section 2. Incorporation by Reference. (1) "Application for Registration of a Mortgage Loan Officer or Mortgage Loan Broker, 2003 edition" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELLA D. ROBINSON, Commissioner
JANIE A. MILLER, Secretary
APPROVED BY AGENCY: November 26, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 28, 2004, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 21, 2004, 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. 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 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 February 2, 2004. 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: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 235, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sally Taylor
(1) Provide a brief summary of:
(a) What this administrative regulation does: It establishes procedures for registration of mortgage loan brokers and mortgage loan officers.
(b) The necessity of this administrative regulation: This regulation is necessary to inform individuals and businesses of the requirements and procedures for registration as mortgage loan brokers and mortgage loan officers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It details the procedures to be followed in registering as a mortgage loan broker or mortgage loan officer.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: It will provide the industry with procedures for registering as a mortgage loan broker or mortgage loan officer.

(2) If 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 mortgage loan brokers and mortgage loan officers who wish to originate mortgage loans in this 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: Mortgage loan brokers and mortgage loan officers who originate mortgage loans in this state must now register with the department.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing budget already provides the necessary funding to be used.
for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be a $50 registration fee.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all mortgage loan brokers and mortgage loan officers who originate mortgage loans in the state.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Second Administrative Regulation)

808 KAR 12:095 Continuation education requirements.

RELATES TO: KRS 294.260
STATUTORY AUTHORITY: KRS 294.140(1)
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 294.140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 294. KRS 294.260(1) requires all registered mortgage loan brokers and registered loan officers to complete twelve (12) hours of continuing professional education each year. This administrative regulation establishes the requirements relating to continuing education.

Section 1. (1) Of the twelve (12) hours of continuing education required every year, registered mortgage loan brokers and registered loan officers shall complete a minimum of six (6) continuing education hours at least once every two (2) years on the requirements of either KRS Chapter 294 or KRS 360.100 or a combination of both.
(2) Only the provisions of KRS 360.100 pertaining to predatory lending and penalties for noncompliance may be included in the education requirements.

Section 2. A continuing education course from another state shall satisfy the continuing education requirement if the mortgage regulatory agency of the state where the course is held has approved the course for continuing education in that state and the course meets the classroom requirements of KRS 294.255 and 294.260.

ELLA D. ROBINSON, Commissioner
JANIE A. MILLER, Secretary
APPROVED BY AGENCY: November 26, 2003
FILED WITH LRC: December 5, 2003 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 28, 2004, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 21, 2004, 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. 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2004. 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: Sally Taylor, Staff Attorney, Department of Financial Institutions, Public Protection and Regulation Cabinet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 235, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sally Taylor
(1) Provide a brief summary of: It establishes procedures and requirements relating to continuing education for registered mortgage loan brokers and registered mortgage loan officers.
(2) The necessity of this administrative regulation: This regulation is necessary to inform individuals of the continuing education requirements and procedures for mortgage loan brokers and mortgage loan officers.
(3) How this administrative regulation conforms to the content of the authorizing statutes: It specifies the subject matter and requirements for fulfilling the continuing education requirement.
(4) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies the courses and the manner in which they must be completed in order to fulfill the continuing education requirement.
(5) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: N/A
(6) The necessity of the amendment to this administrative regulation: N/A
(7) How the amendment conforms to the content of the authorizing statutes: N/A
(8) How the amendment will assist in the effective administration of the statutes: N/A
(9) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All mortgage loan brokers and mortgage loan officers who will be required to register with the department. The registration requirement is effective July 1, 2004, and information is not available to determine how many individuals will be registering as mortgage loan brokers and mortgage loan officers.
(10) 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: Mortgage loan brokers and mortgage loan officers who originate mortgage loans in this state must now register with the department.
(11) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: No cost.
(12) On a continuing basis: No cost.
(13) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing budget already provides the necessary funding to be used for the implementation and enforcement of this regulation.
(14) Provide an assessment of whether an 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 assessments will be necessary to implement this regulation.
(15) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An increase in fees will not be necessary.
(16) TIERING: Is tiering applied? The statutory requirements are applicable to all registered mortgage loan officers and mortgage loan brokers and, therefore, tiering was not applied.
The December meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, December 10, 2003, at 10:30 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Co-Chair, called the meeting to order, and the roll call was taken. The minutes of the November 14, 2003 meeting were approved.

Present were:
Members: Representative John Arnold, Co-Chair; Senator Damon Thayer, Co-Chair; Senators Gary Tapp and Joey Pendleton; Representatives James Bruce and Jimmie Lee.
LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Sarah Amburgey, Karen Howard, Laura Milam, Ellen Steinberg, Emily Caudill, and Jennifer Harrison.
Guests: Carole Catafo, Phillip Rogers, Brenda Allen, Education Professional Standards Board; Robert B. Barnes, Kentucky Teachers' Retirement System; Eddie Mattingly, Rich Dobson, Revenue Cabinet; Eileen D. Durbin, Kevin C. Brown, Board of Licensure of Marriage and Family Therapists; Tom Bennett, Ellen Benzing, Department of Fish and Wildlife; Edward Lingenfelter, William R. Stewart, Steve Lynn, Justice Cabinet; Stephen G. Horn, Department of Alcoholic Beverage Control; Alex Reese, Mike Robinson, Betsy Dunnigan, Benita Jackie, Debbie Saadi, Cabinet for Health Services.

The Administrative Regulation Review Subcommittee met on Wednesday, December 10, 2003, and submits this report:

Administrative regulations reviewed by the Subcommittee:

Education Professional Standards Board: Administrative Certificates
16 KAR 3:010. Certification for school superintendent. Phillip Rogers, Director, and Carole Catafo, Assistant Counsel, represented the Board.
A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to delete outdated language; and (2) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 3:020. Certification for supervisor of instruction. A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, 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.

16 KAR 3:030. Professional certificate for directors and assistant directors of pupil personnel. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 3:040. Director of special education. In response to questions by Co-Chair Arnold, Ms. Catano stated that the amendments to 16 KAR 3:010, 020, 030, 040, and 050 added technology standards for school personnel. The standards did not directly affect the students.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 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.

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades. A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


Educator Preparation

Assessment
16 KAR 6:030. Examination prerequisites for principal certification. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 6 to specify that the examination fee requirements increase would take effect on September 1, 2004, rather than in January 2004. Without objection, and with agreement of the agency, the amendments were approved.

Teachers' Retirement System: General Rules
102 KAR 1:220. Final average salary based on average of three (3) highest salaries. Robert B. Barnes, General Counsel, represented the System.
In response to a question by Co-Chair Arnold, Mr. Barnes stated that the teachers were satisfied with this administrative regulation.

Revenue Cabinet: Sales and Use Tax; Service and Professional Occupations
103 KAR 26:110. Motor carrier repair and replacement parts. Richard Dobson and Eddie Mattingly represented the Cabinet.
A motion was made and seconded to approve the following amendments: to amend the REFERENCES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 3, 4, and 8 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 Government Cabinet: Board of Licensure of Marriage and Family Therapists
201 KAR 32:010. Definitions. Eileen Durbin, Board Chair, and Kevin Brown, Assistant Attorney General, represented the Board.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language and clearly state the function served by this administrative regulation; (2) to amend the REFERENCES TO paragraph to correct statutory citations; and (3) 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 32:025. Marriage and family therapist associate. A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) insert authorizing language; and (b) delete language which repeated the statute, in accordance with KRS 13A.120(2)(e); (3) to amend Section 1 to delete language which repeated the statute, in accordance with KRS 13A.120(2)(e); and (4) to amend Sections 1, 2, 3, 5, and 6 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 32:060. Continuing education requirements. A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 2 to reference 201 KAR 32:010 for the definition of "academic courses"; and (3) to amend Sections 2 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.
Tourism Development Cabinet: Department of Fish and Wildlife Resources: Water Patrol
301 KAR 6:070. Boat dealers. Tom Bennett, Commissioner, and Ellen Benzing, Assistant Counsel, represented the Department.

In response to a question by Representative Bruce, Commissioner Bennett stated that the amendments to this administrative regulation reduced the annual boat dealer registration fee from $150 to $100.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 5 to conform with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2 to reduce the annual registration fee from $150 to $100. Without objection, and with agreement of the agency, the amendments were approved.

Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council
603 KAR 1:180 & E. Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records. Steve Lynn, Associate Counsel, William Stewart, and Edward Lingenfelter represented the Department.

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing
804 KAR 4:030. Transport permit, nonresident licensee. Stephen Horner, Commissioner, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to require three (3) inch lettering only for those vehicles added or altered in the ordinary course of business after the effective date of the administrative regulation; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to specify statutory citations; (3) to create a Section 3 by incorporating by reference the required application form; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 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: Office of Inspector General: Office
906 KAR 1:120. Informal dispute resolution. Alex Reese, Administrative Regulation Coordinator, represented the Office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to permit persons appearing before the panel to refer to relevant reference materials; and (2) to amend Section 3(7) to establish procedures if the Inspector General made a determination that was different from the recommendation of the IDR Coordinator or Panel including notice of the Inspector General’s rationale and the opportunity to request reconsideration by the Inspector General following an in-person meeting. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services
907 KAR 1:145 & E. Supports for community living services for an individual with mental retardation or a developmental disability. Mike Robinson, Commissioner, and Betsy Dunnigan, Assistant Director, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

General Government Cabinet: Board of Dentistry
201 KAR 8:490. Expungement of records.

Board of Hairdressers and Cosmetologists
201 KAR 12:020. Examination.
201 KAR 12:025. Additional study after failing examination.
201 KAR 12:030. License required.
201 KAR 12:031. Replacement of license - duplicate license.
201 KAR 12:045. Apprentice, nail technician, esthetician and instructor’s licensing.
201 KAR 12:050. Reciprocity for valid license.
201 KAR 12:055. Instructor’s license for out-of-state applicant.
201 KAR 12:060. Inspection.
201 KAR 12:065. Inspection of new, relocated and change of owner salons.
201 KAR 12:070. Requirements for salons of esthetic practices.
201 KAR 12:080. Shops’ and schools’ public identification.
201 KAR 12:082. School’s course of instruction.
201 KAR 12:083. Educational requirements.
201 KAR 12:088. Esthetics’ course of instruction.
201 KAR 12:100. Sanitation standards.
201 KAR 12:110. School license.
201 KAR 12:115. School requirements for esthetics course.
201 KAR 12:120. School ‘acuity.
201 KAR 12:125. Schools’ student administrative regulations.
201 KAR 12:140. School equipment.
201 KAR 12:150. School records.
201 KAR 12:200. Requirements for continuing education for renewal of license.
201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary waiver of requirements.
201 KAR 12:220. Esthetic fee requirement.
201 KAR 12:240. Dual cosmetologist/esthetics instructor license.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7.
Permits
405 KAR 8:001. Definitions for 405 KAR Chapter 8.
Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10.
Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12.
Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16.
Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18.
Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20.
Areas Unsuitable for Mining

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax
601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector.
Department of Highways: Traffic
603 KAR 5:066. Weight (mass) limits for trucks.
603 KAR 5:070. Motor vehicle dimension limits.

Education, Arts, and Humanities Cabinet: Kentucky Board of Education: Office of Education: Office of Learning Programs Development: Office of Learning Support Services
704 KAR 7:061. Repeal of 704 KAR 7:060, Missing Kentucky School Children Program.

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Electrical Inspectors
815 KAR 35:040 & E. Licensing of electrical contractors, electricians, and master electricians.

The Subcommittee adjourned at 11:55 p.m. until January 2004.
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 EDUCATION
Meeting of December 1, 2003

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of 12-1-03, having been referred to the Committee on 11-5-03, pursuant to KRS 13A.290(6):

11 KAR 17:010. Definitions for 11 KAR Chapter 17.
11 KAR 17:040. Applying for a prepaid tuition contract.
11 KAR 17:050. Prepaid tuition contract prices, payments, and default.
11 KAR 17:060. Amendment of a prepaid tuition contract.
11 KAR 17:070. Using a prepaid tuition contract.
11 KAR 17:080. Terminating a prepaid tuition contract.
11 KAR 17:090. Refunds and transfers.
11 KAR 17:100. Administrative fees.
16 KAR 7:010. Kentucky Teacher Internship Program.
780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 25, 2003 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of November 25, 2003

The following administrative regulations were available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of November 25, 2003, having been referred to the Committee on November 5, 2003, pursuant to KRS 13A.290(6):

103 KAR 18:050
103 KAR 18:070
907 KAR 1:155
907 KAR 1:520
907 KAR 1:555
907 KAR 3:110

907 KAR 1:530

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 25, 2003 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

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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(Notes: 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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