ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 31, NUMBER 9
TUESDAY, MARCH 1, 2005

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet March 8, 2005 at 10:30 a.m. in Room 149 of the Capitol Annex, Frankfort, Kentucky . See tentative agenda on pages 1487-1488 of this Administrative Register.

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

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Cabinet, Department, Board or Agency		Office, Division, or Major Function	Specific Regulation

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TENTATIVE AGENDA - MARCH 8, 2005, at 10:30 a.m., Room 149 Annex

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

Filing and Publication

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

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted for a 30 day period following publication.

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 15, 2005

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
502 KAR 10:120E

This emergency administrative regulation is being promulgated to implement compliance with the directive of the Department of Homeland Security, Transportation Safety Administration set forth in 49 C.F.R. Part 1572, et seq., in conjunction 49 U.S.C., 5103a, which requires that, commencing January 31, 2005, all new applicants for a hazardous materials endorsement for a commercial driver's license issued by the Commonwealth of Kentucky submit to a security threat assessment conducted by the Transportation Security Administration. This requirement is further mandated for all applicant's for renewal of a hazardous materials endorsement commencing on May 31, 2005. The Commonwealth of Kentucky has elected in accordance with the option provided in 49 C.F.R. 1572.13(f)(1) to collect fingerprints and applicant background information necessary for the Transportation Security Administration to conduct the required security threat assessment. This emergency administrative regulation establishes the procedures by which the Kentucky State Police shall fingerprint and obtain applicant background information for submission to the Transportation Security Administration, and the applicant's fingerprints to the Federal Bureau of Investigation. This emergency administrative regulation further establishes the fee to be charged an applicant by the Kentucky State Police for the collection of this information. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 26, 2005.

ERNIE FLETCHER, Governor
STEPHEN B. PENCE, Lt. Governor, Secretary

JUSTICE AND PUBLIC SAFETY
Department of State Police
Division of Driver's Testing
(New Emergency Administrative Regulation)

502 KAR 10:120E. Hazardous materials endorsement requirements.

RELATES TO: 49 U.S.C. 5103a, and 49 C.F.R. Part 1572
STATUTORY AUTHORITY: KRS 281A.040
EFFECTIVE: January 26, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate regulations to reasonably carry out the provisions of KRS 281A.040. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining for the first time a hazardous materials endorsement for a commercial driver's license no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license. This emergency regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" means commercial driver's license as defined in 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.3.

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Desting established solely to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(8) "KDOT" means the Kentucky Department of Transportation.

(9) "KSP" means the Kentucky State Police.

(10) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee or refugee status.

(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME Submitted on or After January 31, 2005. (1) An applicant applying for a hazardous materials endorsement on or after January 31, 2005, shall first obtain a CDL prior to requesting a security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a background information sheet containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, their DOT medical card, a completed biographical information sheet and a certified check of $115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the commonwealth of a finding of Determination of No Security Threat, as this term is defined in 49 C.F.R. 1572.3, then the applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(6) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the applicant shall not be issued a HME. The applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(7) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME Submitted On or After May 31, 2005. (1) KYDOT shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the background information sheet

containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to their appointment proper identification, their DOT medical card, a completed biographical information sheet and a certified check of $115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the commonwealth may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the renewal applicant shall not be issued a HME. The renewal applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the renewal applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(9) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 4. Transfer Applications For HME Submitted On or After May 31, 2005. (1) In accordance with 49 C.F.R., 1572.13(g), an applicant who applies to transfer an existing HME from another state to the commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. (1) KSP shall establish eight (8) regional fingerprinting centers in the commonwealth. These centers shall be located in the following cities:

(a) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(b) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(c) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(d) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(e) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(f) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(g) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(h) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application For Hazardous Materials Endorsement" OMB No. 1652-NEW, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK MILLER, Commissioner
STEPHEN B. PENCE, Lt. Governor, Secretary

APPROVED BY AGENCY: January 12, 2005
FILED WITH LRC: January 26, 2005 at 1 p.m.
CONTACT PERSON: Roger Wright, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6345, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Roger Wright.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the procedures by which the Kentucky State Police shall collect background information and fingerprints from both initial and renewal applicants for a hazardous materials endorsement for a commercial driver's license. The Federal Department of Homeland Security, Transportation Security Administration, commencing January 31, 2005 for initial applicants and May 31, 2005 for renewal applicants, has mandated a security threat assessment be conducted prior to the issuance or renewal of a hazardous materials endorsement. This regulation further establishes the fee to be charged applicants for collection of the required background information and fingerprints.

(b) The necessity of this administrative regulation: 49 C.F.R. Part 1572, et seq., requires that security threat assessments be conducted on applicants for a hazardous materials endorsement for a commercial driver's license. The Commonwealth of Kentucky, in accordance with the option provided in 49 C.F.R. part 1572.13(f)(1) has elected to collect the applicant background information and fingerprints required for this security threat assessment. This regulation establishes the procedures for the collection of the required information and fingerprints as well as the fee to be charged for this collection service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements the procedures directed by the Transportation Security Administration in 49 C.F.R. Part 1572, et seq., with respect the Commonwealth of Kentucky's obligation to ensure that a hazardous materials endorsement issued to a Kentucky commercial driver's license holder has undergone the federally-mandated security threat assessment which as of January 31, 2005, and May 31, 2005 (for renewal applicants) is prerequisite to the issuance of said endorsement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation implements the procedures for the collection of background information and fingerprints necessary for the Transportation Security Administration to conduct the federally-mandated security threat assessment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation places new obligations on the Kentucky State Police with respect to the issuance of hazardous materials endorsements for a commercial driver's license. This regulation also has an impact on initial and renewal applicants for a hazardous materials endorsements for a commercial driver's license.

(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 State Police will be responsible for collecting security threat assessment background information forms and fingerprints for submission to the Federal Transportation Security Administration and the Federal Bureau of Investigation, respectively. Applicants for hazardous materials endorsement will be required to complete

the background form and submit to fingerprinting.

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

(a) Initially: Kentucky State Police estimates that it will cost $489,712 per year to collect applicant background information for submission to the Transportation Security Administration, and to collect and submit fingerprints to the Federal Bureau of Investigation. Based upon on estimated number of 9,000 hazardous materials endorsement applicants per year, the cost per applicant is approximately $114.44.

(b) On a continuing basis: Same as initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fingerprint and background information collection fee to be charged to hazardous materials endorsement applicants in the amount of $115.

(7) Provide an assessment of whether an 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 established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee of $115 to be charged to hazardous materials endorsement applicants to cover the cost of fingerprinting and collection of applicant background information.

(9) TIERING: Tiering is not applicable to this administrative regulation. 49 C.F.R. Part 1572 mandates that all initial and renewal applicants for hazardous materials endorsement for commercial driver's licenses submit to a security threat assessment involving a fingerprint verified criminal history check and completion of a background information sheet. There is no means by which to apply tiering under these circumstances.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 49 U.S.C. 5103a; 49 C.F.R. Part 1572.

2. State compliance standards: Commencing on January 31, 2005 for initial an applicant for a hazardous materials endorsement for a commercial driver's license and on May 31, 2005, for a renewal applicant for a hazardous materials endorsement for a commercial driver's license, the USA Patriot Act (49 U.S.C. 5103a) requires all such applicants to undergo a security threat assessment conducted by the Federal Transportation Security Administration. 49 C.F.R. Part 1572 sets forth the manner in which the states may elect to collect fingerprints and background information questionnaires from a hazardous materials endorsement applicant for completion of the required security threat assessment.

3. Minimum or uniform standards contained in the federal mandate. All initial applicants for a hazardous materials endorsement must complete the required security threat assessment commencing on January 31, 2005. All renewal applicants for a hazardous materials endorsement must complete the required security threat assessment commencing on May 31, 2005.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

STATEMENT OF EMERGENCY
907 KAR 1:018E

This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services (DMS) to establish a state maximum-allowable cost for any drug for which two (2) or more multisource drugs with a significant cost difference exist; to determine a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that amount as the state maximum-allowable cost; to alter drug reimbursement effective February 15, 2005, from AWP minus twelve (12) percent to AWP minus sixteen (16) percent and effective January 1, 2006 to AWP minus seventeen (17) percent; to revise the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; to allow one (1) dispensing fee per rolling twenty-four (24) day period per nursing facility service recipient per drug except for certain circumstances; to establish for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a ninety-two (92) day supply with only one (1) dispensing fee allowed for the maintenance drug refill within the ninety-two (92) day time period; to establish that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and to add gross amount due to drug reimbursement options. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation differs from the emergency administrative regulation filed with the Legislative Research Commission on December 3, 2004 in that it alters drug reimbursement on February 15, 2005, from average wholesale price (AWP) minus twelve (12) percent to AWP minus sixteen (16) percent and effective January 1, 2007 to AWP minus seventeen (17) percent; in that it revises the drug repackaging payment to $0.02 per unit dose for a nonunit dose drug repackaged by a pharmacist; in that it allows one (1) dispensing fee per rolling twenty-four (24) day period per nursing facility service recipient per drug except for certain circumstances; and in that it establishes for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a ninety-two (92) day supply with only one (1) dispensing fee allowed for the maintenance drug refill within the ninety-two (92) day time period. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

ERNIE FLETCHER, Governor
JAMES W. HOLSINGER, Jr., M.D., Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Emergency Amendment)

907 KAR 1:018E. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(4), 205.6316(4), EO 2004-726

EFFECTIVE: January 28, 2005

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, 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 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) [~~A-rated generic product" means a product that the FDA has found to be bioequivalent.~~

~~(2)~~] "Average wholesale price" or "AWP" means the average

wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(2) [~~(3)~~] "Department" means the Department for Medicaid Services or its designated agent.

(3) [~~(4)~~] "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) [~~(5)~~] "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(5) [~~(6)~~] "Food and Drug Administration" or "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.

(6) "Gross amount due" means the total price of a drug claimed from all sources.

(7) [~~"Nonsolid dosage form" means a covered drug item other than an oral tablet, oral capsule, or inhaler.~~

~~(8)~~] "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) [~~Except as specified in subsection (4)(e) of this section, reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product.~~] If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:604, the reimbursement to the participating provider [~~for the dispensing fee~~] shall be reduced by the amount of the copayment.

(2) The department [~~shall~~]:

(a) May establish a state maximum-allowable cost for a drug:

1. If two (2) or more multisource drugs with a significant cost difference exist for the given drug; and

2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted to approximate, as closely as possible, the estimated acquisition cost for the lower priced drug. The approximated estimated acquisition cost shall be utilized as the state maximum-allowable cost; and

(b) Shall maintain a current listing of drugs and their corresponding state maximum-allowable costs via a link from the department web site located at the following address:

(c) http://www.chfs.ky.gov/dms.

(3) An appeal of a state maximum-allowable cost price for a drug shall be as follows:

(a)1. The provider shall email or fax a completed "MAC Price Inquiries and Research Request Form" (which is available at the department and at the website address http://kentucky.fhsc.com/providers/documents.asp by clicking on "MAC Price Inquiries and Research Request Form or via the specific website address http://kentucky.fhsc.com/Downloads/providers/KYRx_MACResearchRequestForm.pdf) to First Health Services Corporation. The email address is rebate@fhsc.com and the fax number is 804-217-7911; or

2. The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;

(b) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days;

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum-allowable cost price;

(d) The state maximum-allowable cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum-allowable cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in subsection (3)(c) of this section; or

2. The provider is able to document that, despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider; and

(e) When the change in state maximum-allowable cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment. [~~For which a federal upper limit does not exist; and~~

~~2. For which at least one (1) readily and nationally available A-rated generic product exists;~~

~~(b) Determine a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturer, including both generic and brand name, and multiplying that price by 150 percent. The lowest price for a drug shall be:~~

~~1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and~~

~~2. Determined by reviewing the pricing determinations of AWP, WAC, and direct price for the drug;~~

~~(c) Remove a state maximum-allowable cost for a drug if a federal upper limit becomes available for the drug; and~~

~~(d) Maintain a current listing of drugs and their corresponding state maximum-allowable costs at the department web site located at the following address: http://chs.ky.gov/dms.~~

~~(3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of accurate documentation (including recent drug purchase summaries, invoices, or remittance advices) from the provider, the department:~~

~~(a) Shall review the referenced product and its corresponding state maximum-allowable cost value to ensure it reflects an accurate market price and availability; and~~

~~(b) May consider adjusting or removing the state maximum-allowable cost for the drug if the department determines that the state maximum-allowable cost does not accurately reflect current market price or conditions.~~]

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List [~~Formulary~~] established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

3. The estimated acquisition cost (EAC) which shall:

a. Through February 14, 2005, equal the AWP minus twelve (12) percent, plus a dispensing fee and, if applicable, a unit dose addition;

b. Effective February 15, 2005, equal the AWP minus sixteen (16) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

c. Effective January 1, 2006, equal the AWP minus seventeen (17) percent, plus a dispensing fee and, if applicable, a unit dose addition;

4. The usual and customary billed charge; or

5. The gross amount due.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. Made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and

2. The lesser of:

a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;

b. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

c. The estimated acquisition cost (EAC), which shall:

(i) Through February 14, 2005, equal the AWP minus twelve

(12) percent, plus a dispensing fee and, if applicable, a unit dose addition;

(ii) Effective February 15, 2005, equal the AWP minus sixteen (16) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

(iii) Effective January 1, 2006, equal the AWP minus seventeen (17) percent, plus a dispensing fee and, if applicable, a unit dose addition;

d. The usual and customary billed charge; or

e. The gross amount due. [~~Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:~~

~~1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;~~

~~2. The state maximum allowable cost plus a dispensing fee and unit dose add-on as appropriate if a federal upper limit is unavailable;~~

~~3. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or~~

~~4. The usual and customary billed charge.~~

~~(d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:~~

~~1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or~~

~~2. The usual and customary billed charge.~~

~~(e)1. Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.~~

~~2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:~~

~~a. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;~~

~~b. The state maximum allowable cost plus a dispensing fee and unit dose add-on as appropriate;~~

~~c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or~~

~~d. The usual and customary billed charge.~~

~~3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:~~

~~a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or~~

~~b. The usual and customary billed charge.~~]

(e) [~~4.~~] If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [~~reimbursement shall not include a dispensing fee~~].

(f) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;

2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or

3. Prior authorization is required by the department and has been denied or has not been requested.

(g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than:

1. Through January 31, 2005:

a. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed;

b. [~~2.~~] Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and

c. [~~3.~~] Four (4) dispensing fees per drug within a calendar month for a nonsolid dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug; and

2. Effective February 1, 2005, one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:

a. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed;

b. The drug is a controlled substance, in which case up to three (3) additional dispensing fees shall be allowed;

c. The drug is a legend intravenous drug, in which case one (1) additional dispensing fee shall be allowed; or

d. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) For an outpatient service [~~or personal care~~] recipient:

1. Through January 31, 2005, there shall not be more than:

a. [~~1.~~] One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;

b. [~~2.~~] Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

c.(i) [~~3.a.~~] Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or

(ii) [~~b.~~] Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care; and

2. Effective February 1, 2005, a maintenance drug shall be dispensed, if appropriate, up to a ninety-two (92) day supply with only one (1) dispensing fee allowed for a refill of the maintenance drug within the ninety-two (92) day time period.

(j) For a personal care recipient there shall not be more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;

2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

3.a. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or

b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(k) [~~(j)~~] Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:

1. National Drug Code (NDC); or

2. Generic name, strength, and dosage form.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) A pharmacy claim shall meet the point of sale (POS) re-

quirements for services in accordance with 907 KAR 1:673.

(7) If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(8) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(9) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(10) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(11)(a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.

(12) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(13)(a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug; and

(b) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall submit [~~bill~~] its usual and customary amount and gross amount due for a drug; and

(b) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (3) of this section and [~~based on the conclusion of the dispensing fee study of the report conducted~~] in accordance with KRS 205.561, the dispensing fee, unless excluded by Section 2(4)(e) of this administrative regulation, shall be four (4) dollars and fifty-one (51) cents per prescription for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of:

1. Through January 31, 2005:

a. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and

b. [~~2.~~] Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist; and

2. Effective February 1, 2005, two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:

(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation; [~~or~~]

(b) The physician's usual and customary amount or gross amount due [~~charge to the general public for the drug~~]; or

c. The federal upper limit.

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

Section 5. Material Incorporated by Reference. (1) The "MAC Price Inquiries and Research Request Form, December 2004 edition," is incorporated by reference.

(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.

JAMES W. HOLSINGER, Jr. M.D., Secretary
SHANNON TURNER, Commissioner
DUANE L. KILTY, Jr., Ph.D., Undersecretary
APPROVED BY AGENCY: January 27, 2005
FILED WITH LRC: January 28, 2005, at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

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 method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(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 method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation includes establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing one dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that

only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid Services. Currently, DMS is subsidizing the commercial market via high reimbursement to pharmacies for excessively inflated drug ingredient costs and high dispensing fees. This amendment would bring Medicaid more in line with other state Medicaid plans as well as the commercial sector.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers and drug manufacturers 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: Pharmaceutical providers or manufacturers shall be affected in that effective February 15, 2005, drug reimbursement will change from its current AWP minus 12% to AWP minus 16% and effective January 1, 2006, to AWP minus 17%; that a state maximum-allowable cost may be established for any drug for which 2 or more multisource drugs with a significant cost difference exist; in that the prior methodology for determining a state maximum-allowable cost is being replaced; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill. Long term care pharmaceutical providers will be impacted in that the long term care repackaging fee will be $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist. Providers of maintenance drugs outpatient recipients will be affected in that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period. Additionally, this administrative regulation allows one dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances and clarifies that over-the-counter drugs dispensed to nursing facility service recipients shall not be reimbursed via the Medicaid Outpatient Pharmacy Program but rather shall be considered part of nursing facility reimbursement.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $42.5 million annually ($29.66 million federal funds; $12.84 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $42.5 million annually ($29.66 million federal funds; $12.84 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

4. Will this administrative regulation impose stricter require-

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

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

STATEMENT OF EMERGENCY
907 KAR 1:019E

This emergency administrative regulation is being promulgated to cover up to three (3) brand name drug prescriptions per recipient per month; to allow for unlimited generic drug prescriptions; to establish that a maintenance drug shall be dispensed in a ninety-two (92) day supply if the recipient demonstrates stability on the maintenance drug; and to clarify that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

ERNIE FLETCHER, Governor
JAMES W. HOLSINGER, JR., M.D., Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Emergency Amendment)

907 KAR 1:019E. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), EO 2004-726 [~~2003-064~~]

EFFECTIVE: January 28, 2005

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004 [~~2003-64, effective December 16, 2003~~], reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

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

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms [~~http://chs.ky.gov/dms~~].

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug list " means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, [~~and~~] drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, [~~or~~] drug categories, or related items and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(13) [~~"Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018 for a drug that has been designated as a maintenance drug in the department's drug list.~~

~~(14)~~] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

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

(15) [~~(16)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(16) [~~(17)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(17) [~~(18)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(18) [~~(19)~~] "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered.

(19) [~~(20)~~] "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(20) [~~(21)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) [~~(22)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A drug covered through the Outpatient Pharmacy Program shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) The department shall have a drug list which:

(a) Lists:

1. Drugs, [and] drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) Specifies covered vaccines;

(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(h) May be updated monthly or more frequently by the department; and

(i) Shall be posted on the department's Internet web site.

(3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. A drug if used to promote smoking cessation;

6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

7. An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

8. A barbiturate;

9. A benzodiazepine; or

10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient [recipients] for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (6) [(7)] of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Noncontrolled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; [or]

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) Effective March 1, 2005, a recipient demonstrates stability on a given maintenance drug, in which case, any subsequent fill of the maintenance drug shall be dispensed in a ninety-two (92) day supply.

(4) [Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for maintenance drug dispensing fee exceptions if a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.

(5)] The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient [recipients] for the department to make payment for the compounded drug or compounded drug category.

(5) [(6)] An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:

(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or

(d) The certification number, including applicable alpha char-

acters, of a physician assistant for the state in which the individual practices.

(6) [~~(7)~~] If it is determined by the department to be in the best interest of a recipient [~~recipients~~], the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(7) [~~(8)~~] A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient has been restricted.

(8) Effective March 1, 2005, the department shall:

(a) Cover up to three (3) brand name prescriptions per recipient per month unless the department determines that it is in the best interest of the recipient to cover any additional brand name prescription; and

(b) Cover unlimited generic prescriptions per recipient per month in accordance with the requirements and limitations established elsewhere in this administrative regulation.

(9) A refill of a prescription shall not be covered unless at least eighty (80) percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, by mail, express-delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number. A request shall be submitted in accordance with the following:

(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving[~~:~~

~~1. Maintenance drug dispensing fee exceptions; or~~

~~2.~~] exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:

1. Complete a Brand Name Drug Request Form;

2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and

3. Indicate on the Brand Name Drug Request Form.

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) A Brand Name Drug Request Form shall not be required if:

1. It has been determined by the department to be in the best interest of a recipient [~~recipients~~] not to require completion of a Brand Name Drug Request Form; and

2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.

(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:

1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;

2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with subsection (1) of this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and

b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:

a. Submit a prior authorization request to the department's urgent fax number; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) and (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

(a) The prescription;

(b) The nursing facility order sheet; or

(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone or fax to

the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(6) Prior authorization of drugs for a Medicaid long-term care recipient [~~recipients~~] in a nursing facility [~~nursing facilities~~] shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempted from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient [~~recipients~~] for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's pharmacy director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 9(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position;

2. A request to make a verbal presentation shall be submitted in writing via FAX or e-mail to the department with a copy to the chair of the P&T Committee no later than forty-eight (48) hours in advance of the P&T Committee meeting;

3. An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

4. A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pfd format); or

b. Mailed to the department with a total of eighteen (18) copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and
(f) Name of a contact person.
(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.
(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.

Section 8. Drug Classes for P&T Committee Review. Following are the drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list:

Narcotics - Long Acting	Nondihydropyridine Calcium Channel Blockers
Narcotics - Short and Intermediate Acting	Lipotropics - Nonstatins
Nonsteroidal Anti-inflammatory Drugs (Traditional NSAIDS)	Lipotropics - Statins
Nonsteroidal Anti-inflammatory - COX II Inhibitors	Platelet Inhibitors
Antifungals - Onychomycosis	Antianxiety - General
Antifungals - Oral	Antidepressants - Other than SSRI's
Antifungals - Topicals or Derm	Antidepressants - SSRI's
Antivirals - Herpes	Antipsychotics - Atypical
Antivirals - Influenza	Drugs for ADD
Cephalosporin First Generation	Insulins
Cephalosporin Second Generation	Oral Hypoglycemics - Alpha Gluconsidase Inhibitors
Cephalosporin Third Generation	Oral Hypoglycemics - Biguanides
Hepatitis C	Oral Hypoglycemics - Meglitinides
Macrolides	Oral Hypoglycemics - Second Generation Sulfonylureas
Quinolones First Generation	Oral Hypoglycemics - Thiazolidineiones
Quinolones Second Generation	Histamine-2 Receptor Antagonists (H2RA)
Quinolones Third Generation	Proton Pump Inhibitors (PPI)
Antihistamines - Second Generation	Nausea Agents (5HT3)
Beta Adrenergics - Short Acting	Glaucoma - Alpha 2 Adrenergics
Beta Adrenergics - Long Acting	Glaucoma - Beta Blockers
Beta Adrenergics for Nebulizers	Glaucoma - Prostaglandin Inhibitors
Inhaled Systemic Glucocorticoids	Glaucoma - Carbonic Anhydrase Inhibitors
Leukotriene Inhibitors	Glaucoma - Miscellaneous
Nasal Steroids	Osteoporosis Agents
ACE Inhibitors	Serotonin Receptor Agents
Angiotensin Receptor Antagonists	
Beta Blockers	
Dihydropyridine Calcium Channel Blockers	

Section 9. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:
(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and
(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.
(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet web site for six (6) months after which a copy of the final determination may be requested from the department.
(3) The secretary shall make a final determination in accordance with KRS 205.564(9).
(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:
(a) Be in writing;
(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;
(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;
(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet web site; and
(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 10. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, [~~January 30, 2003,~~] edition";
(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, [~~March 3, 2003,~~] edition";
(c) "MAP-012802 PPI and H2 Blocker Request Form, October 18, 2004, [~~March 3, 2004,~~] edition."
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHANNON TURNER, Commissioner
DUANE L. KILTY JR., Ph.D., Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: January 27, 2005
FILED WITH LRC: January 28, 2005 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 of drugs through the Medicaid Outpatient Pharmacy Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(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 provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative establishes that the Department for Medicaid Services (DMS) shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; clarifies that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program, and clarifies that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period had elapsed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid Program in order to maintain the financial viability of the Department for Medicaid Services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing that DMS shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; by clarifying that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program; and by clarifying that DMS shall not cover a refill of a prescription unless at least 80% percent of the prescription time period had elapsed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing that DMS shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; by clarifying that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program; and by clarifying that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period had elapsed.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers 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: Pharmaceutical providers or manufacturers shall be affected in that DMS shall cover up to 3 brand name drug prescriptions per month as opposed to unlimited generic drug prescriptions and that a maintenance drug shall be dispensed in a 92-day supply if the recipient demonstrates stability on the maintenance drug. Additionally this administrative regulation clarifies that reimbursement for over-the-counter drugs provided by nursing facility pharmaceutical providers shall be considered part of nursing facility service reimbursement and shall not be reimbursed via the Medicaid Outpatient Pharmacy Program and that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period has elapsed.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $108 million annually ($75.38 million federal funds; $32.62 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $108 million annually ($75.38 million federal funds; $32.62 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 5:033. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS [~~13A.100,~~] 164.748(4), 164.785
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.785 establishes the Kentucky Tuition Grant Program. KRS 164.748(4) and 164.753(4) require the Kentucky Higher Education Assistance Authority to promulgate an administrative regulation to administer [~~administers~~] grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth student eligibility requirements for the Kentucky tuition grant program.

Section 1. Eligibility of Students. In order to qualify for disbursement of a Kentucky tuition grant, a student shall:

(1) Be a resident of the Commonwealth of Kentucky;

(2) Be enrolled as a full-time student in an eligible program of study;

(3) Be enrolled at an educational institution and not have previously earned a first baccalaureate or professional degree;

(4) Be determined by the authority, in accordance with 11 KAR 5:130 and [~~5:120 through~~] 5:140, to have established financial need for the KTG;

(5) Have remaining KHEAA grant limit [~~. For purposes of Kentucky tuition grant, a student enrolled in a two (2) year institution shall be limited to five (5) semesters of KHEAA grant eligibility. A student enrolled in a four (4) year institution shall be limited to nine (9) semesters of KHEAA grant program eligibility (including any KHEAA grant limit used at a two (2) year institution)~~];

(6) Not receive financial assistance in excess of need to meet educational expenses;

(7) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(8) Satisfy all financial obligations to the authority and to any educational institution. Ineligibility under this subsection may be waived for cause by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(9) Be a citizen of the United States or an eligible noncitizen; [~~and~~]

(10) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus; and [~~.~~]

(11) Not be:

(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099;

(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

JOHN PRATHER, Chair

APPROVED BY AGENCY: November 15, 2004

FILED WITH LRC: November 18, 2004 at 10 a.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:130 through 11 KAR 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit [~~.~~

~~(a) A student enrolled as a full-time student in each academic term of a two (2) year eligible program of study shall be limited to five (5) semesters of CAP grant program eligibility.~~

~~(b) A student enrolled as a full-time student in each academic term of a four (4) year eligible program of study shall be limited to nine (9) semesters of CAP grant program eligibility (including any KHEAA grant limit used in a two (2) year eligible program of study)~~];

(5) Not receive financial assistance in excess of need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.7891 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;

(8) Be a citizen of the United States or an eligible noncitizen;

(9) Be receiving at least part-time credit at an educational institution in an eligible program of study and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus; [~~and~~]

(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, as defined by the Council on Postsecondary Education in 13 KAR 2:090; and

(11) Not be:

(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099;

(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

JOHN PRATHER, Chair

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CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2)-164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to **164.7891** [~~164.785~~]. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. An application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:
(1) Expected Pell grant;
(2) Expected family contribution; and
(3) CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.
(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.
(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in Section 5 of this administrative regulation except that KTG awards shall be offered only to the extent that funds are available.
(4) A KTG award shall not exceed $2,400 for an academic year.

Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.
(2) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.
(3) A semester award shall not exceed tuition and fee charges for that semester.
(4) A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance.
(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student.
(3) The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.
(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his cost of education by more than $300, the amount over $300 shall be considered to be an overpayment. If an overpayment occurs, this amount shall be returned to the authority immediately.

Section 6. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.
(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.
(2) If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.
(3) If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

JOHN PRATHER, Chair
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CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 5:160. Disbursement procedures.

RELATES TO: KRS 164.7535, 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to **164.7891** [~~164.785~~]. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the disbursement procedures for KHEAA grant programs.

Section 1. Eligibility Verification. (1) The KGPO shall certify the eligibility of students and submit to the authority a complete and accurate eligibility verification file (EVF), according to instructions accompanying the eligibility verification file layout provided by the authority, to indicate which KHEAA grant recipients are actually enrolled at the institution.
(2) The educational institution shall submit to the authority a properly certified eligibility verification file (EVF):
(a) For the fall academic term, by:
1. October 1 for educational institutions using nonquarter hour academic terms; and
2. October 15 for educational institutions using quarter hour academic terms; and
(b) For the spring academic term, by:
1. February 15 for educational institutions using nonquarter

hour academic terms; and

2. April 15 for educational institutions using quarter hour academic terms.

(3) The instructions accompanying the eligibility verification file layout shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient; and

(b) Conditions under which KHEAA grant funds shall be returned to the authority.

(4) If the KGPO fails to provide complete and accurate information in the proper format in the eligibility verification file according to the instructions or fails to submit the file to the authority by the deadline established in subsection (2) of this section, the authority shall not advance KHEAA grant funds in the next academic term until the file for the next academic term is properly certified and submitted.

Section 2. Disbursement and Delivery of Funds. KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students or application of the funds to the accounts of eligible students during the academic term for which the funds are received by the educational institution.

(1)(a) Except as provided in Section 1(4) of this administrative regulation and subject to the availability of funds, the authority shall disburse in August to educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students enrolled at the institution during the fall academic term, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the fall academic term of the preceding academic year.

(b) Except as provided in Section 1(4) of this administrative regulation and subject to the availability of funds, the authority shall disburse in January to educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students enrolled at the institution during the spring academic term, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the spring academic term of the preceding academic year.

(2) The educational institution shall deliver KHEAA grant funds to eligible students or apply KHEAA grant funds to the accounts of eligible students enrolled for the academic term beginning not earlier than ten (10) days before the first day of classes of each semester, trimester or quarter of the academic term.

(3)(a) Upon receipt of the properly certified eligibility verification file for that academic term, the authority shall process the EVF data and update the grant database with award information.

(b) Based on the newly-revised database, the authority shall generate a semester college disbursement report/file for each institution.

(c) Based on this update, the authority shall determine through a reconciliation process whether any additional funds are owed to or refunds are due from the institution.

1. If additional funds are owed to the institution, the authority shall forward those funds to the institution.

2. If refunds are due from the institution, the authority shall bill the institution.

(4) Not later than thirty (30) days after the end of the academic term, the KGPO shall return to the authority, according to instructions attached to the eligibility verification file layout, all funds advanced for that academic term that remain undisbursed to eligible students. The authority may withhold any services and funds from the educational institution from the due date until the eligibility verification file and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. A KTG awarded for the academic year shall be disbursed by the authority:

(1) To institutions using nonquarter hour academic terms, in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term; and

(2) To institutions using quarter hour academic terms, no more than one-third (1/3) per quarter [~~two-thirds (2/3) for either the fall or the spring academic term~~].

Section 4. (1) A CAP grant awarded for the academic year shall be disbursed by the authority:

(a) To institutions using nonquarter hour academic terms, in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term; and

(b) To institutions using quarter hour academic terms, no more than one-third (1/3) per quarter [~~two-thirds (2/3) for either the fall or the spring academic term~~].

(2) The educational institution shall adjust the amount of the CAP grant delivered to an eligible student or applied to the account of an eligible student enrolled at the institution if the student is enrolled part time during the academic term.

Section 5. (1) KHEAA grants disbursed by the authority to eligible students enrolled at an educational institution that uses a short winter term in combination with longer fall and spring terms shall be applied by the institution to the student's account or delivered to the student so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term.

(2) Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance for that academic term. Credit hours for which the student is enrolled during the short winter academic term may be added to credit hours for which the student enrolls in the fall and spring academic terms to establish enrollment as a full-time student during those academic terms.

Section 6. (1) The educational institution shall:

(a) Be responsible for proper disbursement of KHEAA grants to the eligible students during the academic term for which the grants are intended;

(b) Not make KHEAA grant funds available to the grant recipient nor apply those funds to the recipient's account:

1. Prior to the date that the recipient has completed the registration requirements (except for the payment of tuition and fees) at the institution for each academic semester or quarter for which the KHEAA grant is awarded; or

2. After the end of the academic term for which the funds are received by the institution;

(c) Be liable for disbursement to the wrong individual or to an ineligible student or for untimely disbursement pursuant to this section; and

(d) Make restitution to the authority of any amount improperly disbursed.

(2) Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

JOHN PRATHER, Chair

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HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining

to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Eligible program of study" is defined in KRS 164.769(2)(b).

(4) "Expected family contribution" is defined in KRS 164.769(2)(c).

(5) "Participating institution" is defined in KRS 164.769(2)(d).

(6) "Public school" means the common schools of the commonwealth providing preschool, elementary, middle school, or secondary instruction.

(7) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(8) "Semester" is defined in KRS 164.769(2)(f).

(9) "Summer term" is defined in KRS 164.769(2)(g).

(10) "Teaching" means performing continuous classroom instruction as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application 2004-2005, according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants.

(a) A person who previously received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 prior to July 1, 1996 shall be eligible to apply for and be awarded a renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(b) A person who previously received a loan or scholarship pursuant to KRS 164.769 after July 1, 1996, shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, postbaccalaureate or master's degree will be completed shall be:

(a) $210 per credit hour if the student is enrolled during a regular semester; or

(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 10 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 1, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) [~~twelve (12)~~] percent per annum beginning April 1, 2005. **Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.**

Section 7. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance;

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively

recruit students from minority population groups for participation in this program.

Section 12. Incorporation by Reference. (1) The Teacher Scholarship Application 2004-2005, 12/03 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN PRATHER, Chair

APPROVED BY AGENCY: November 15, 2004

FILED WITH LRC: November 18, 2004 at 10 a.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 7, 2005)

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

RELATES TO: KRS 164.7891

STATUTORY AUTHORITY: KRS 164.748(4), 164.7891(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Disbursement" means the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student in accordance with 11 KAR 14:030, Section 2.

(3) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(4) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(5) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. (1) The scholarship recipient shall immediately become liable for repayment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, if the scholarship recipient:

(a) Ceases enrollment at the school of osteopathic medicine prior to completion of the program of study;

(b) Begins, but fails to complete, an internship leading to licensure to provide qualified service;

(c)1. Fails to begin a residency in a qualified field immediately following completion of the program of study at the school of osteopathic medicine or immediately following completion of an intervening internship; or

2. Begins, but fails to complete, a residency in a qualified field;

(d) Fails to obtain a license to practice osteopathic medicine in the Commonwealth; or

(e) Otherwise fails to perform qualified service in full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year after obtaining a license to practice osteopathic medicine.

(2) If the authority has reason to believe that an event specified in subsection (1) of this section has occurred, the authority shall send to the scholarship recipient's last known address written notification of demand for payment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, that shall be effective upon mailing.

(3) The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. If more than one (1) promissory note has come due for repayment and remains unpaid, payments shall first be applied to the earliest unpaid promissory note. Payments shall be applied first to accrued interest and then to principal.

Section 3. If the scholarship recipient obligated for repayment remits a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and on each unpaid promissory note in the order in which the promissory notes were executed.

Section 4. The interest rate applicable to repayment of a promissory note under this program shall be six (6) ~~[twelve (12)]~~ percent per annum beginning April 1, 2005. **Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.**

JOHN PRATHER, Chair

APPROVED BY AGENCY: November 15, 2004

FILED WITH LRC: November 18, 2004 at 10 a.m.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended At ARRS, February 7, 2005)

201 KAR 26:145. Code of conduct.

RELATES TO: KRS 319.032, 319.082

STATUTORY AUTHORITY: KRS 319.032(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the board to establish requirements for disciplining a credential holder of this board, whether a licensed psychologist, certified psychologist, certified psychologist with autonomous functioning, licensed psychological practitioner, licensed psychological associate, an applicant or a holder of a temporary license. This administrative regulation establishes a code of conduct for a person practicing psychology.

Section 1. Definitions. (1) "Client" means a person who meets the requirements established in Section 2 of this administrative regulation.

(2) "Confidential information" means information revealed by a client or clients or otherwise obtained by a credential holder in a professional relationship ~~[, if there is reasonable expectation that because of the relationship between the client and the credential holder, or the circumstances under which the information was revealed or obtained, the information shall not be disclosed by the credential holder without the informed written consent of the client.]~~

(3) "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.

(4) "Credential holder" is defined by KRS 319.010(3).

(5) "Professional relationship" means a mutually agreed upon relationship between a credential holder and a client for the purpose of the client obtaining the credential holder's professional expertise.

(6) "Professional service" means all actions of the credential holder in the context of a professional relationship with a client.

(7) "Supervisee" means a person who functions under the extended authority of the credential holder to provide psychological services.

Section 2. Client Requirements. (1) Identification of a client. ~~[(a)]~~ A client shall be a person who receives:

(a) An evaluation, assessment, or psychological testing; ~~[for~~

~~diagnostic purposes, psychological testing, a counseling, psychotherapeutic, or other professional psychological services for the treatment or amelioration of an emotional, mental, nervous or behavioral disorder or distress or individual-level psychological consultation in the context of a professional relationship.~~]

(b) Other professional psychological services for the treatment or amelioration of an emotional, mental, nervous, addictive or behavioral disorder or distress, or a mental health condition; or

(c) Psychological consultation in the context of a professional relationship.

(2) [~~(b)~~] A corporate entity or other organization shall be considered the client if the professional contract is to provide a psychological service of benefit to the corporate entity or organization.

(3) [~~(c)1.~~] A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purposes [~~purpose~~].

[~~2. The minor or legally incompetent adult shall be considered the client for an issue that:~~

~~a. Directly affects the physical or emotional safety of the individual, including a prohibited relationship; or~~

~~b. Is specifically reserved to the individual and agreed to by the guardian prior to the rendering of the service.~~]

(4) [~~(2)~~] A person identified as a client pursuant to **subsections (1)-(3)** [~~subsection 1~~] of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

Section 3. Competence. (1) Limits on practice. The credential holder shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

(2) Maintaining competency. The credential holder shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.

(3) Adding new services and techniques. The credential holder, if developing competency in a service or technique that is new either [~~new~~] to the credential holder or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals and shall obtain [~~seek~~] appropriate education and training [~~in the new area~~]. The credential holder shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.

(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.

(5) Sufficient professional information. A credential holder rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.

(6) Maintenance and retention of records.

(a) The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:

1. The presenting problem, purpose or diagnosis;

2. The fee arrangement;

3. The date and substance of each professional [~~billed or service count~~] contact or service;

4. Test results or other evaluative results obtained and the basic test data from which the results were derived;

5. Notation and results of a formal consult with another provider; and

6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) The credential holder shall ensure [~~assure~~] that all [~~data entries in the professional~~] records are maintained for a period of not less than six (6) [~~five (5)~~] years after the last date that services were [~~service was~~] rendered.

(c) The credential holder shall store and dispose of written, electronic and other records in a manner which shall ensure [~~insure~~] their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than six (6) [~~five (5)~~] years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.

(7) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to provide for [~~deal with~~] an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

Section 4. Impaired Objectivity and Dual Relationships. (1) Impaired credential holder.

(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired due to a mental, emotional, physiologic, pharmacologic, or substance [~~substances~~] abuse condition.

(b) If an impairment [~~a condition~~] develops after a professional relationship has been initiated, the credential holder shall:

1. Terminate the relationship in an appropriate manner;

2. Notify the client in writing of the termination; and

3. Assist the client in obtaining services from another professional.

(2) Prohibited dual relationships.

(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired because of the credential holder's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client, shall not:

1. Engage in verbal or physical behavior toward the client which is sexually seductive, demeaning, or harassing;

2. Engage in sexual intercourse or other physical intimacy with the client; or

3. Enter into a potentially exploitative relationship with the client.

(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is [~~proven to be~~] clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the credential holder.

Section 5. Client Welfare. (1) Providing explanation of procedures. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services.

(a) If professional services are terminated, the credential holder shall offer to assist the client in obtaining services from another professional [~~help locate alternative sources of professional services or assistance if indicated~~].

(b) The credential holder shall:

1. Terminate a professional relationship if the client is not benefiting from the services [~~relationship~~]; and

2. Prepare the client appropriately for the termination.

(3) Stereotyping. The credential holder shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client.

(4) ~~Sexual or other dual relationship with a client. The credential holder shall not enter into a sexual or other dual relationship with a client, as specified in Section 4(2) of this administrative regulation.~~

~~(5)~~] Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.

(5) [~~(6)~~] Referrals on request. The credential holder providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.

Section 6. Welfare of Supervisees and Research Subjects. (1) Welfare of supervisees. The credential holder shall not exploit a supervisee.

(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.

Section 7. Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information.

(2) Disclosure without informed written consent. The credential holder shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:

(a) Apply to information that pertains to:

1. The corporation or organization; or

2. An individual, including personal information, if the information is obtained in the proper course of the contract; and

(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:

1. Obtained in a separate professional relationship between the credential holder and the individual; and

2. Subject to the confidentiality requirements established in this section.

(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality shall be handled.

(6) Legally dependent clients. At the beginning of a professional relationship the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his or her communications with the credential holder.

(7) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and shall ensure [~~assure~~] that all persons working under the credential holder's authority comply with the requirements for confidentiality of client material.

(8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.

(9) Reporting of abuse of children and vulnerable adults. The credential holder shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if the credential holder takes reasonable steps to ensure [~~assure~~] that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.

(12) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.

(13) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding a client after the professional relationship between the credential holder and the client has ceased.

Section 8. Representation of Services. (1) Display of credentials. The credential holder shall display his or her current credential to practice psychology on the premises of his or her professional office.

(2) Misrepresentation of qualifications. The credential holder shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.

(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.

(4) False or misleading information. The credential holder shall not include false or misleading information in a public statement concerning professional services offered.

(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:

(a) The service or product;

(b) The degree of his or her responsibility for the service or product; or

(c) The nature of his or her association with the service or product.

(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder's professional qualifications or affiliations.

Section 9. Disclosure of Cost of Services. The credential holder shall not mislead or withhold from a [~~the~~] client, [a] prospective client, or third party payor, information about the cost of his or her professional services.

Section 10. Assessment Procedures. (1) Confidential information. The credential holder shall treat as confidential [~~an~~] assessment results [~~result~~] or interpretations [~~interpretation~~] regarding an individual [~~as confidential information~~].

(2) Protection of integrity of assessment procedures. The credential holder shall not disseminate [~~reproduce or describe in a popular publication, lecture, or public presentation~~] a psychological test [~~or other assessment device~~] in a way that may [~~might~~] invalidate it [~~them~~].

(3) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to another professional shall accompany this offering by a manual or other printed material which [~~fully~~] describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall [~~explicitly~~] state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The credential holder shall ensure that [~~the~~] advertisements for the assessment procedure or interpretive service are factual [~~and descriptive~~].

Section 11. Aiding Illegal Practice. (1) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide psychological services.

(2) Providing supervision. The credential holder shall exercise appropriate supervision over a supervisee, as required by 201 KAR 26:171.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004

FILED WITH LRC: September 16, 2004 at 3 p.m.
CONTACT PERSON: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.071(3) authorizes the board to grant inactive status for a credential holder for a period of up to three (3) consecutive years. This administrative regulation establishes the requirements for inactive status.

Section 1. Inactive status may be granted to a credential holder pursuant to KRS 319.071(3).

(1) The credential holder shall be relieved of **his or her** [~~their~~] obligation to pay the renewal fee and of maintaining supervision of **his or her** [~~their~~] practice, but shall continue to meet the requirements for continuing education.

(2) The credential holder may return to active status within the three (3) year period upon:

(a) Notification to the board;

(b) Payment of the current renewal fee;

(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and

(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.

(3) The three (3) consecutive year period of inactive status shall begin at the date of expiration of the current period of licensure.

(4) If the credential holder does not reactivate his or her [~~their~~] credential at the end of [~~during~~] the three (3) year period of inactive status, then the credential shall be forfeited and the credential holder shall make a new application to the board and be reexamined by the board before a new credential may be issued. If the credential holder returns to active status within the three (3) year period, his or her new renewal date **shall** [~~will be deemed to~~] be the date of return to active status.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: September 15, 2004
FILED WITH LRC: September 16, 2004 at 3 p.m.
CONTACT PERSON: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.032(1)(f), 319.050, 319.053, 319.064, 319.071
STATUTORY AUTHORITY: KRS 319.032(1)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that **meet** [~~meets~~] the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each credential holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. The continuing education shall:

(a) Provide specific content planned and evaluated to improve the credential holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence; [~~and~~]

(c) Strengthen the habits of critical inquiry and balanced judgment; and[~~.~~]

(d) Include a minimum of three (3) hours in either ethical practice or risk management.

(2) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(3)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of credential renewal. The credential holder shall:

(1) Maintain and provide adequate records including certificates [a ~~certificate~~] of attendance and documentation of completion of the required [~~an approved program of~~] continuing education hours, or

(2) Provide documentation through a board-approved registry which shall certify the name and license number of the credential holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All [A] continuing education activities [~~activity~~] approved by the board shall be accepted toward [~~satisfy~~] the continuing education requirements for renewal of a credential. A credential holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor [a] continuing education programs [~~program~~].

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall be accepted toward [~~satisfy~~] the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers, or an affiliated state chapter;

(b) A recognized state, regional, national, or international psychological association; or

(c) A state or provincial psychology licensure board;

(2) The following programs shall be approved for continuing education:

(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;

(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Mental Health and Mental Retardation Services;

(c) [~~A home study course provided by the American Psychological Association; and~~

~~(d)~~] Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section.

(3)(a) The board may [~~shall~~] approve an organization that is not listed in Section 5(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval;

2. Pays an initial application fee of $250 [~~(50) dollars~~]; and

3. Proposes to sponsor [a] continuing education programs [~~program~~] that meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 [~~(50) dollar~~] renewal fee annually.

(4)(a) The board may [~~shall~~] approve a specific continuing education program that is not listed in Section 5(2) of this administrative regulation if the sponsor of the program:

1. Files a written request for approval;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which [~~Proposes to sponsor a continuing education program that~~] meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program which satisfies the requirements for license renewal shall meet the following criteria:

(1) The program shall be:

(a) Offered or sponsored by an organization which has been approved by the board; or

(b) A specific program approved by the board;

(2) The program shall:

(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) A presenter shall be a professional qualified in the defined content area;

(4) The program's time shall be clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance shall be recorded by the program's sponsor;

(6) Documentation of completion shall be provided to the participant;

(7) A participant shall complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours on the following basis:

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than six (6) continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than six (6) continuing education hours for these teaching activities.

(4)[~~(a)~~] A person who completes **home study or internet-based courses shall not receive:**

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than six (6) continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twelve (12) continuing education hours through interactive videoconferencing participation. [~~a home study course shall:~~

~~1. Earn six (6) continuing education hours; and~~

~~2. Not receive:~~

~~a. Credit more than once for completing a particular study course during a renewal period; and~~

~~b. More than six (6) continuing education hours through a home study or internet-based course in a renewal period.~~

~~(b) A person who participates in teleconferencing in an interactive setting shall:~~

~~1. Earn one (1) continuing education hour for each clock hour of participation; and~~

~~2. Not receive more than six (6) continuing education hours through interactive videoconferencing [teleconferencing] participation.~~]

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary

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GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: Each credential issued by the board requires some type of supervised experience for the applicant. This administrative regulation establishes those requirements.

Section 1. Supervisory Requirements. (1) The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least 100 hours of supervisory sessions distributed over the year.

(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience shall be 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.

(3) Supervisors shall be licensed psychologists or doctoral-level psychologists approved by the board.

Section 2. For a person applying for licensure as a psychologist with the health service provider designation, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:

(1) The experience shall occur within an organized training

program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) [~~1.~~] Actively licensed by the Board of Examiners in Psychology; or

(c) [~~2.~~] Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) [~~c~~)] For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision;

(7) Training shall be postclerkship, postpracticum and postexternship level;

(8) The internship shall have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and which is made available to prospective interns;

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Postdoctoral Supervisory Experience. (1) The one (1) year of postdoctoral experience required by KRS 319.050(2)(c) shall be a training-oriented professional experience.

(2) The supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(3) During the year of postdoctoral experience, the candidate shall:

(a) Obtain and maintain a temporary license as a psychologist as required in KAR 201 26:155, Section 2;

(b) Be under supervision as required by 201 KAR 26:171; and

(c) Be employed:

1. By a:

a. Health care facility or agency;

b. Regional mental health/mental retardation board;

c. College or university;

d. Government agency; or

e. Independent practice.

(4) [~~(2)~~] The postdoctoral year shall be served:

a. In a formalized postdoctoral internship program in a health care facility; or

b. In an informal arrangement that meets the requirements of subsection (2) of this section.

(5) [~~(4)~~] The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section, at the time of application for temporary licensure.

(6) [~~(5)~~] If the postdoctoral experience is in an independent practice, a special application letter shall **affirm** [~~attest to~~]:

(a) The identity of the temporarily-licensed psychologist, supervisor, and employer; and

(b) That [~~1.~~] the supervising licensed psychologist is not hired, employed or engaged under contract by the candidate and shall not be terminated by the candidate;

(c) That [~~2.~~] the candidate is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(d) That [~~3.~~] the candidate has both administrative and clinical supervision which are provided by the independent practice or employer.

(7) [~~(6)~~] If the postdoctoral experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection **(2)** [~~(4)~~] of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

a. Supervising student clinical work;

b. Diagnostic and interviewing activity that occurs within clinical research projects; or

c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(8) [~~(7)~~] The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the postdoctoral experience as required by this section.

Section 4. An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours which shall meet the following criteria:

(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 5.[~~4.~~] An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171.

(1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board,

and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor which delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee;

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
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GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064
STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination requirements.

Section 1. [~~Definitions.~~] (1) The written examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the ASPPB examination contractor and owned by the Association of State and Provincial Psychology Boards. [~~Prior to April 1, 2002, applicants may choose either the computerized delivery or paper-and-pencil form. After April 1, 2002,~~]

(a) The EPPP shall be taken by computer administration.

[~~(a) For those applicants taking a paper-and-pencil form of the EPPP in 2001-2002, the board shall publish instructions which include the examination schedule with place, time and final date by which the applicant shall file the required materials.~~

~~(b) For those applicants taking the computerized EPPP examination,~~]

(b) [~~(a)~~] The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The oral examination shall be structured to cover ethical principles, professional practice and Kentucky mental health law.

Section 2. General Requirements. (1) An applicant for examination shall:

(a) Submit a completed application as required by 201 KAR 26:155, Section 1; and

(b) Pay the applicable fee established in 201 KAR 26:160.

(2) [~~Once the application has been approved by the board,~~] The applicant shall sit for the examination within one (1) year of the notice of the application being approved by the board [~~sixty (60) days of the date on the authorization-to-test letter~~]. **An applicant** [~~Applicants~~] may sit for the examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories and Canada, but shall register and apply in only one (1) jurisdiction.

(3) [~~Failure to take the examination within sixty (60) days of the authorization-to-test date shall lead to a forfeit of application fees and necessitate a reapplication to the board.~~

~~(4)~~] If an applicant loses eligibility to sit for the EPPP because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:

(a) The applicant shall forfeit all fees paid; **and** [~~and~~]

(b) Any temporary license issued to the applicant shall be terminated [~~on the scheduled date of the examination~~].

Section 3. Examination for Licensure as a Licensed Psychologist with the Health Service Provider Designation. (1) The applicant shall pass:

(a) The written examination in accordance with subsection (2) of this section; and

(b) The oral examination in accordance with subsection (6) of this section.

(2) [~~On the EPPP,~~] The applicant shall obtain a computerized EPPP scaled score of 500 or shall have obtained an EPPP passing score for licensure in effect at the time of test administration [~~an ASPPB recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper and pencil form until April 1, 2002) or computerized EPPP scaled score of 500~~]. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) [~~Pursuant to KRS 319.053(5), an applicant for licensure as a licensed psychologist who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license until all requirements for licensure have been completed.~~

~~(4)~~] If an applicant for licensure as a licensed psychologist fails the EPPP examination, the candidate shall reapply to the board, pay the appropriate fees and be deemed eligible by the board to be permitted to sit again for the examination [~~another sixty (60) day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization-to-test letter will lead to a forfeiture of fees and necessitate a reapplication to the board~~].

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The written and oral examinations are successfully completed; or

2. The temporary license is terminated.

(b) The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required two (2) years of supervised experience have been approved by the board.

[~~(4) [(5)] If an applicant for licensure as a licensed psychologist fails the oral examination, the applicant shall:~~

~~(a) File a remediation plan within thirty (30) days of notice of failure; and~~

~~(b) Be eligible to sit for the next available oral examination upon approval of the remediation plan by the board~~] [~~the board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next examination are known. A temporary license shall not be renewed by the board more than two (2) times~~][~~.~~]

(4) [~~(5)~~][~~(6)~~] An applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board.

(a) This examination shall cover ethical principles, professional practice and Kentucky Mental Health Law. The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(b) Each examiner shall independently rate the applicant's performance.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the oral examination.

(5) [~~(6)~~][~~(7)~~] If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered an oral examination by a

second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan approved by the board.

(c) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed psychologist members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed [~~in each of the three (3) areas in order to pass~~] the examination.

(6) [~~(7)~~] [~~(8)~~] If the applicant for licensure as a licensed psychologist fails to pass the examination, and wishes to apply to be credentialed as a licensed psychological associate, a completed application and the appropriate fee, as required by 201 KAR 26:160, shall be submitted with the proposed area of competency and supervision indicated. The board shall accept the applicant's previous examination results to satisfy the requirements as to criteria level and area of competency.

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A written examination [~~in accordance with subsection (2) of this section~~] unless the applicant's previous examination results for the EPPP examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; **or** [~~and~~]

(b) The applicant shall obtain a computerized EPPP scaled score of 500 [~~or shall have obtained an EPPP score at the doctoral level in effect at the time of test administration~~]. The applicant shall be notified by the board of the score, as well as of passing or failing the examination. [~~An oral examination in accordance with subsection (5) of this section.~~

~~(2) On the EPPP, the applicant shall obtain an ASPPB recommended passing score for licensure of seventy (70) percent (raw score of 140 on the paper-and-pencil form until April 1, 2002) or computerized EPPP scaled score of 500. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.~~]

(2)[~~(3)~~] Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the objective examination (EPPP) shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3)[~~(4)~~] If an applicant for licensure as a licensed psychological practitioner fails the EPPP examination, the candidate may reapply to the board, pay the appropriate fees and [~~be deemed eligible by the board to~~] be permitted to sit for the examination again. [~~another sixty (60) day eligibility period. Failure to take the EPPP within sixty (60) days of the authorization-to-test letter will lead to a forfeiture of fees and necessitate a reapplication to the board.~~

~~(a) The candidate shall continue to function under the supervision of the board-approved supervisor until the written and oral examinations are successfully completed.~~]

(4) [~~(a)~~][~~(b)~~] The candidate shall not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) An applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner.

(a) In order to pass the examination, the applicant shall demonstrate an acceptable level of knowledge on the ethical principles, professional practice, and Kentucky mental health law [~~This examination shall cover ethical principles, professional practice and Kentucky mental health law. The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination~~].

(b) Each examiner shall independently rate the applicant's performance, using the same criteria as the oral examination for licensed psychologist candidates.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the oral examination.

(6) If the applicant fails the first oral examination, the applicant may reapply and shall be administered an oral examination by a second team composed in the same manner as the first team.

(7) If the applicant fails the second oral examination, the applicant may reapply and shall be administered an oral examination by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed [~~in each of the three (3) areas in order to pass~~] the examination.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

(a) Obtain a computerized EPPP scaled score of 400; or

(b) [~~shall~~] Have obtained an EPPP passing score for licensure at the master's level in effect at the time of test administration.

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination [~~The applicant shall obtain on the EPPP a passing score of sixty (60) percent (raw score of 120 on the paper-and-pencil form until April 1, 2002) or computerized scaled score of 400. The applicant shall be notified of the score, as well as of passing or failing the examination by the board~~].

(2) Pursuant to KRS 319.064(3), an applicant for licensure [~~certification~~] as a licensed psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license [~~until the results of the next regularly scheduled examination are known~~].

(3) If an applicant for licensure as a psychological associate fails the examination, the applicant shall:

(a) File a remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the examination upon approval of the plan by the board [~~board shall, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next regularly scheduled examination are known. A temporary license shall not be renewed by the board more than two (2) times.~~

~~(4) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision~~].

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
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GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.

(2) The application required by subsection (1) of this section

shall be made by submitting a completed Form Psy-1, as incorporated in 201 KAR 26:155, to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or if the candidate fails to pass the EPPP within one (1) year of the date of the notice of approval by the board [~~authorization to test letter after approval~~] for a temporary license.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which **a candidate who has** [~~candidates who have~~] completed **his or her** [~~their~~] degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board **shall** [~~will~~] review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations.

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary

APPROVED BY AGENCY: September 15, 2004

FILED WITH LRC: September 16, 2004 at 3 p.m.

CONTACT PERSON: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, February 7, 2005)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053 requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for applicants.

Section 1. Application. (1) An application for a credential as a licensed psychological practitioner may be submitted on form Psy 1, as incorporated in 201 KAR 26:155, after the requirements established in KRS 319.053(1) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board; and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the objective (EPPP) examination as established in 201 KAR 26:230, Section 4.[;]

(2) [a] The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination. [~~or~~

~~(b) If the previous examination score does not satisfy the requirements of paragraph (a) of this subsection, the candidate shall take the Examination for Professional Practice in Psychology (EPPP) within sixty (60) days from the date on the authorization-to-test letter, which comes from the ASPPB examination contractor. Upon receipt of the application for licensure, the candidate will receive a packet of materials from the board about the EPPP which will instruct the candidate to contact the ASPPB examination contractor directly for the procedures to follow regarding test application, payment and taking the examination.~~]

(3) [~~(2)~~] The applicant shall pass the structured oral examination established in 201 KAR 26:230, Section 4(5).

TRACY DWIGHT EELLS, MBA, Ph.D., Chair
R.B. RUDOLPH, JR., Secretary

APPROVED BY AGENCY: September 15, 2004

FILED WITH LRC: September 16, 2004 at 3 p.m.

CONTACT PERSON: John C. Parrish, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, February 7, 2005)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339
STATUTORY AUTHORITY: KRS 324A.035(3)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."

Section 2. The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice" in effect at the time the services were performed:
(1) A certified general real property appraiser;
(2) A certified residential real property appraiser;
(3) A licensed real property appraiser; and
(4) An associate real property appraiser.

Section 3. An appraisal report made with regard to a federally related transaction shall be in writing.

Section 4. [~~(1)~~] The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the "American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating", ANSI Z765-2003 [~~1996~~], as approved by the American National Standards Institute, Inc.
[~~(2) The board shall accept an allowance not to exceed five (5) percent of the square footage of the subject property for measurements made under subsection (1) of this section.~~]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Uniform Standards of Professional Appraisal Practice, 2005 [~~2004~~] edition; and
(b) American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765-2003 [~~1996~~].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40509, (859) 543-8943, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

C. W. WILSON, Chair
APPROVED BY AGENCY: October 22, 2004
FILED WITH LRC: December 14, 2004 at 2 p.m.
CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2480 Fortune Drive, Suite 120, Lexington, Kentucky, phone (859) 543-8943, fax (859) 543-0028.

OFFICE OF THE GOVERNOR
Kentucky Department of Veterans Affairs
(As Amended at ARRS, February 7, 2005)

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

RELATES TO: KRS 40.460(2)(b), 141.444
STATUTORY AUTHORITY: KRS **40.450(3),** 40.460(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 40.450(3) requires the department to promulgate administrative regulations required for the effective administration of KRS 40.410 to 40.560.** KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for programs financed by the fund.

Section 1. Definitions. (1) [~~"Fund" means the Kentucky Veterans' Program Trust Fund.~~
~~(2)~~]"Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.
(2) "Fund" means the Kentucky Veterans' Program Trust Fund.
(3) "Honorably separated veteran" means an individual discharged or released from the military with an honorable discharge, a discharge under honorable conditions, or a general discharge.

Section 2. Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:
(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;
(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;
(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;
(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;
(e) Provides a service, supply, program, equipment or other expenditure [~~deemed~~] essential to the operation of the Kentucky Veterans Center other Kentucky veterans nursing homes that would otherwise not be available; or
(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.
(2) Fundraising.
(a) The fund may accept a gift, donation, or grant from an individual, a corporation, or government entity.
(b) Solicitation of funds or fundraising on behalf of the fund shall not be made unless approved by the commissioner **in accordance with KRS 11A.055**.

Section 3. Board of Directors. (1) The board of directors shall consist of ten (10) members, including:
(a) The commissioner;
(b) The commissioner's designee from Kentucky Department of Veterans Affairs [~~Deputy Commissioner of the Kentucky Department of Veterans Affairs~~];
(c) A member of the:
1. Joint Executive Council of Veterans Organizations of Kentucky; and
2. Governor's Advisory Board for Veterans Affairs;
(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:
1. The American Legion, Department of Kentucky;
2. The Veterans of Foreign Wars, Department of Kentucky;
3. The Disabled American Veterans, Department of Kentucky; and

4. AMVETS, Department of Kentucky; and

(e) Two (2) at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chairman of the board of directors.

(b) The board of directors shall hold an election to fill the position of vice-chairman.

(3) An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors. The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(4) A member of the board of directors shall be an honorably separated veteran [~~, as defined by KRS 36.310~~].

(5) Terms of members.

(a) The initial appointments to the board of directors shall be as follows:

1. A member appointed pursuant to subsection **(1)**[~~(2)~~](c) of this section shall serve for a period of three (3) years.

2. A member appointed pursuant to subsection (2)(d) of this section shall serve for a period of two (2) years.

3. A member appointed pursuant to subsection (2)(e) of this section shall serve for a period of one (1) year.

(b) After the initial appointments established under paragraph (a) of this section, a member shall serve for a period of three (3) years.

(c) A member shall serve until his successor is appointed.

(6) The board of directors shall:

(a) Meet at the call of the chairman;

(b) Inform organizations represented on the board of each action considered or taken by the board;

(c) Review projects and recommend approval or disapproval;

(d) Prioritize projects;

(e) Investigate the need for a specific project or program;

(f) Establish guidelines for a project;

(g) Make a recommendation to the commissioner for the utilization and control of funds in the Veterans' Program Trust Fund; and

(h) Prepare an annual report providing an accounting of the Veterans' Program Trust Fund assets and financial activity for each fiscal year.

(7) The chairman of the fund shall assign duties as appropriate to his staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and approved projects.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: December 7, 2004

FILED WITH LRC: December 7, 2004 at noon

CONTACT PERSON: Pamela Luce, Executive's Staff Advisor, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, February 7, 2005)

401 KAR 59:760. Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.

RELATES TO: KRS 224.20-100, 224.20-110(1), 224.20-120, 42 U.S.C. 7408, 7410

STATUTORY AUTHORITY: KRS 224.10-100**(5), (30)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7410 likewise requires Kentucky to implement standards for national primary and secondary ambient air quality. This administrative regulation provides for the control of volatile organic compound emissions from new and existing commercial motor vehicle and mobile equipment refinishing operations in Boone, Campbell, and Kenton Counties.

Section 1. Definitions. (1) "Commercial motor vehicle and mobile equipment refinishing operation" means any company or individual, other than the original manufacturer, that applies a coating containing a volatile organic compound (VOC) as a pretreatment, primer, sealant, basecoat, clear coat, or topcoat to mobile equipment for commercial purposes.

(2) "High volume, low pressure (HVLP) sprayer" means an air atomized sprayer that operates at a maximum air pressure of ten (10) pounds per square inch gauge (psig) as measured at the nozzle.

(3) "Mobile equipment" means any equipment that may be drawn or is capable of being driven on a roadway, including automobiles, trucks, truck bodies, truck trailers, cargo vaults, utility bodies, camper shells, construction equipment, farming equipment, and motorcycles.

Section 2. Applicability. This **administrative** regulation shall apply to all commercial motor vehicle and mobile equipment refinishing operations in Boone, Campbell, and Kenton Counties.

Section 3. Operating Requirements. On and after February 1, 2005, a person at a facility subject to this administrative regulation shall:

(1) Use one (1) or more of the following application techniques, in accordance with manufacturer's specifications, to apply any coating containing a VOC as a pretreatment, primer, sealant, basecoat, clear coat, or topcoat to mobile equipment for commercial purposes [~~finish to mobile equipment~~]:

(a) Flow or curtain coating;

(b) Dip coating;

(c) Roller coating;

(d) Brush coating;

(e) Cotton-tipped swab application;

(f) Electrodeposition coating;

(g) High volume, low pressure (HVLP) spraying;

(h) Electrostatic spray;

(i) Airless spray;

(j) Air-assisted airless spray; and

(k) Any [~~(j)~~] othercoating application method that the applicable facility [~~person~~] demonstrates and the cabinet determines achieves emissions reductions equivalent to HVLP or electrostatic spray application methods. This demonstration shall be submitted to and approved by the cabinet. The cabinet shall:

1. Hold a public hearing on the demonstration; and

2. Submit the demonstration to U.S. EPA for approval.

(2) Be properly trained in the use of an HVLP sprayer, or equivalent application, in accordance with manufacturer's specifications, and the handling of a regulated coating and any solvents used to clean the sprayer.

(3) Store the following materials in nonabsorbent, non-leaking containers and keep these containers closed at all times when not in use:

(a) Fresh coatings;

(b) Used coatings;

(c) Solvents;

(d) VOC-containing additives and materials;

(e) VOC-containing waste materials; **and**

(f) Cloth, paper, or absorbent applicators moistened with any of the items listed in this subsection.

Section 4. Exemptions. The following coating applications **shall be** [~~are~~] exempt from the requirements of Section 3 of this administrative regulation:

(1) The application of a coating for graphic designs, stenciling, lettering or other identification marking through the use of an air brush method; [~~through the use of an airbrush method for stenciling, lettering, and other identification marking;~~]

(2) The application of a coating sold in nonrefillable aerosol container; **and**

(3) The application of a coating to mobile equipment solely for repair of small areas of surface damage or minor imperfections [~~automotive touch-up repair and refinishing materials~~].

Section 5. Reporting Requirements. **(1)** Before February 28,

2005, sources subject to the provisions of this **administrative** regulation shall submit documentation sufficient to substantiate that high efficiency transfer application techniques of coatings required in Section 3 of this administrative regulation are in use at their facility. The documentation shall also verify that all employees applying coatings are properly trained in the use of an HVLP sprayer, or equivalent application, and the handling of a regulated coating and any solvents used to clean the sprayer.

(2) The source shall retain the documentation on-site and make the documentation available to the cabinet and the U.S. EPA upon request. This documentation shall be sent to the Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Attn: Regulation Development Section.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: January 12, 2005
FILED WITH LRC: January 14, 2005 at noon
CONTACT PERSON: Carl Millanti, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, e-mail Carl.Millanti@ky.gov

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, February 7, 2005)

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), 13B.170, 67A.620, 95.620, 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 237.110(4), 403.215, 405.060(2), (3), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 C.F.R. [~~302.32, 302.38, 302.51-302.54,~~] 302.60, 302.65, 303.6, 303.32, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b)

STATUTORY AUTHORITY: KRS 15.055(2), 194B.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), (c)(1)(G), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS 205.712(2) requires the Cabinet for Health and Family Services [~~Families and Children~~] to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection [~~and distribution~~] of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection. (1)[~~(a)~~] Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by 921 KAR 1:001, Section 1(3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:

(a) Fifteen (15) calendar days of a request for income withholding with a:

1. "CS-89, Order/Notice to Withhold Income for Child Support"; and

2. "CS-72, National Medical Support Notice"; or

(b) Two (2) days after entry of an obligor into the State Directory of New Hires for health insurance with the notice specified in paragraph (a)2 of this subsection.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date the "CS-89, Order/Notice to Withhold Income for Child Support" is mailed; and

(b) Transfer the "CS-72, National Medical Support Notice" to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) The cabinet shall notify the obligor within fifteen (15) calendar days, in accordance with **405.467(4)** [~~405.457(4)~~], of a request for income withholding for an assigned support obligation or health insurance coverage with a "CS-89, Order/Notice to Withhold Income for Child Support", and "CS-164, Notice of Income Withholding" that:

(a) An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and

(b) If the obligor does not contest, as specified in paragraph (a) of this subsection, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the "CS-72, National Medical Support Notice".

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) [~~: 1. As a primary tool for collection of child support;~~

~~2. If necessary, to enroll a child in a health insurance plan by forwarding form "CS-72, National Medical Support Notice" to an obligor's employer; and~~

~~3. To collect spousal support if spousal support meets the definition of "duty of support" in KRS 205.710(5).~~

~~(b)~~] An obligor shall inform the cabinet of any changes in:

1. A current employer or source of income; and

2. Access to health insurance.

(8) [~~; and~~

~~3. Changes to either.~~

~~(c) As specified in KRS 405.060,~~] If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) [~~to obtain:~~

~~1. Judicial nullification of the transfer; or~~

~~2. A settlement in favor of the creditor.~~

~~(d) If current support and an arrearage amount are subject to withholding and a court has not set an amount for an arrearage payment, the arrearage payment shall be determined by multiplying the currently ordered obligation by twenty-five (25) percent, if:~~

~~1. The order is issued in Kentucky; and~~

~~2. Kentucky has exclusive continuing jurisdiction.~~

~~(e)~~] If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) [~~(f) If the address of an obligor is unknown, and the cabinet is unable to comply with the notice provisions of KRS 405.467(4), the cabinet shall provide forms "CS-89, Order/Notice to Withhold Income for Child Support", "CS-164, Notice of Income Withholding", and "CS-72, National Medical Support Notice" within fifteen (15) calendar days of locating the obligor notifying that:~~

~~1. An obligor may contest the withholding by requesting an administrative hearing as specified in Section 9 of this administrative regulation; and~~

~~2. If the obligor does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.~~

~~(g) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, or within two (2) days after entry of an obligor into the State Directory of New Hires for medical support, of the following:~~

~~1. The employer or other income source shall implement:~~

~~a. Income withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice is mailed; and~~

~~b. Transfer of the National Medical Support Notice within twenty (20) work days after the date of the notice to the health plan administrator.~~

~~2.~~] The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

(a) An assigned support obligation [~~a. A child support~~] payment to the state disbursement unit in the child support agency; or

(b) [b.] A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) [3.] The employer or other income source:

(a) Shall include on the transmittal to the cabinet the obligor's:

1. Name;

2. Social Security number; and

3. Cabinet-assigned case number; and

(b)1. Shall not be [a. Obligor's:

(i) Name;

(ii) Social Security number; and

(iii) Cabinet-assigned case number; and

b. Date the money was withheld.

4. The employer or other income source is not] required to change payroll frequency but shall withhold at least once monthly; or

2. [.5. The employer or other income source] May combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by:

a. Name;

b. Social Security number; and

c. Cabinet-assigned identification number.

(12) [6. If the obligor terminates employment, the employer or other income source shall:

a. Notify the cabinet promptly; and

b. Provide the information required by KRS 405.465(5).

(2) Allocation of income withheld payments in IV-D and non-IV-D cases.

(a) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

1. Totaling the obligor's current support obligations subject to income withholding;

2. Dividing each current support obligation by the total amount from subparagraph 1 of this paragraph, to determine a percentage; and

3. Multiplying the withheld payment received from the employer by the percentage from subparagraph 2 of this paragraph, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(b) The cabinet shall allocate the payment amount determined in paragraph (a)3 of this subsection to each of the obligor's current support obligation amounts subject to income withholding.

(c) If the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withholding amount among the obligor's ordered arrears obligations subject to income withholding by:

1. Totaling the obligor's ordered arrears obligations subject to income withholding;

2. Dividing the monthly arrears obligation for each child support case by the total amount from subparagraph 1 of this paragraph, to determine a percentage; and

3. Multiplying the remaining income withholding amount by the percentage from subparagraph 2 of this paragraph, to determine the portion of the payment to be applied to each arrears obligation subject to income withholding.

(d) The cabinet shall allocate the payment amount determined in paragraph (c)3 of this subsection to each of the obligor's arrears obligations subject to income withholding.

(e) If the obligor's current support and arrears obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withheld amount proportionately according to paragraphs (a) and (b) of this subsection.

(3) Allocation of nonwage payments in IV-D and non-IV-D cases. The cabinet shall allocate nonwage payments:

(a) As designated by an obligor for a specific case; and

(b) If not designated by an obligor, by allocating a proportionate share to each of the obligor's child support cases, as determined in subsection (2)(a)1 and 2 of this section.

(4)] Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the Education Cabinet, Office of Employment and Training [Cabinet for Workforce Development, Division of Unemployment Insurance], shall collect a child support payment from an obligor receiving unemployment compensation.

(b) The cabinet shall provide a [forms] "CS-73, Unemployment Insurance Letter", and "CS-76, Unemployment Insurance Notice of Withholding" to an obligor notifying that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76, [an] "Unemployment Insurance Notice of Withholding" to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 [9] of this administrative regulation.

Section 2. Enforcement. (1) Federal [(5)] Income tax refund offset and administrative offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, Kentucky Transitional Assistance Program, or "K-TAP", Kinship Care, or foster care child support shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least $150 delinquent; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

3. Nonpublic assistance arrearage owed is equal to or greater than $500, exclusive of fees, court costs, or other nonchild-support debt;

4. Cabinet has a copy of the:

a. Current support order; and

b. Payment record; and

5. Arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.

(c)1. A case submitted for federal tax refund offset shall be subject to federal administrative offset of nonexempt federal payments.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(2) [(6)] State income tax refund offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The obligor's name and Social Security number are known;

3. The arrearage is verified as accurate; and

4. The amount of the arrearage is at least $150.

(b) A nonpublic assistance support arrearage shall qualify for offset if the:

1. Case meets the criteria specified in subsection (1)(b)1, 2, and 4 [(5)(b)] of this section; and

2. Required arrearage amount is not less than $150.

(3) [(7)] Tort claim settlements and administrative offset. The cabinet shall:

(a) [The cabinet shall:

1.] Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)[(5)](a) or (b) of this section;

(b) [2.] Send by mail form "CS-122, Advance Notice of Intent to Collect Past-Due Support" to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and

(c) [3.] Notify the Finance and Administration Cabinet to offset

administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection [subparagraph 1 of this paragraph].

4. Financial Institution Data Match. The cabinet shall:

[(b) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing as specified in Section 9 of this administrative regulation.

(c) If an administrative payment is intercepted by the Finance and Administration Cabinet:

1. The payment shall be:

a. Forwarded to the Child Support Program, or "CSP"; and

b. Distributed according to applicable provisions of Sections 2 through 6 of this administrative regulation; and

2. An obligor shall be sent a notice by mail advising that:

a. The obligor's administrative payment is intercepted and forwarded to the CSP due to past-due support; and

b. The obligor may request an administrative hearing as specified in Section 9 of this administrative regulation.

Section 2. K-TAP and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

(a) Payable to the Division of Child Support; and

(b) Reported to the K-TAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

(2) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance payments and report the result to the child support agency.

(a) If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:

1. Distribute to the family at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 4(2).

(b) Unless a hearing is requested or a case remains eligible for assistance, the child support agency shall distribute the collection as specified in Section 5 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the Division of Child Support; and

(2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts. (1) A tax refund intercepted in a public assistance account shall be:

(a) Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or

2. Held by the cabinet for six (6) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearage; or

(b) If no assigned arrearage remains:

1. Held by the cabinet for six (6) months, if a joint income tax return is filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing as specified in Section 9 of this administrative regulation. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution is in the obligor's favor; or

(b) The agency or family, if resolution is against the obligor.

Section 5. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 6. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 7. Financial Institution Data Match. (1) The cabinet shall, if conducting a data match with a financial institution for the purpose of locating a delinquent obligor's assets:]

(a) Use the following criteria to identify a case for seizure of assets:

1. The obligor owes an arrearage equal to at least six (6) months obligation or $1,000, whichever is less; and

2. The obligor is not complying with the most recent support order;

(b) Issue a [the forms] "CS-68, Order to Withhold", and "CS-69, Answer to Withhold", to a financial institution holding the obligor's account[,] or accounts;

(c) Issue a [copy of forms] "CS-68, Order to Withhold" and "CS-121, Noncustodial Parent's [Parent or Obligor] Answer to Withhold" to the obligor by certified mail within two (2) working days;

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. Notifying the [(d) Notify an] obligor that to retain an account with a financial institution an order to withhold may be contested by requesting an administrative hearing as specified in Section 4 [9] of this administrative regulation;

(d) Refer the case for parent-locator service, if a "CS-68, Order to Withhold" is returned and the forwarding address for the obligator is unknown;[.]

(e) Send to the financial institution a [the form] "CS-83, Order to Deliver" if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (g) of this subsection [(2) of this section];

(f) Send [to the financial institution the form "CS-83, Order to Deliver"] within twenty (20) days of [if] an administrative hearing decision, a:

1. "CS-83, Order to Deliver" to the financial institution, if a [results in a find that the] case qualifies for the withhold and deliver process; or

2. "CS-70, Release of Order to Withhold" to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor that [Refer the case for parent-locator service if the order to withhold is returned and the forwarding address for the obligor is unknown; and

(h) Notify the financial institution and the obligor by form "CS-70, Release of Order to Withhold", within twenty (20) working days of the Division of Administrative Hearings decision or the obligor's action if the obligor:

1. Makes full payment;

2. Posts a bond for the full arrearage; or

3. Signs a form "CS-78, Payment Agreement" as specified in subsection (2)(d) of this section and makes the first payment within seven (7) calendar days of the agreement.

(2)] to retain an account with a financial institution, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt a "CS-68, Order to Withhold":

1. Pay the total arrearage;
2. Post a bond for the total arrearage; or
3. Sign a "CS-78, Payment Agreement" to pay within fifteen (15) days:
a. Current support;
b. A $1000 lump sum payment which may be negotiated if the amount:
(i) Places an unjust burden on the obligor; or
(ii) Prevents the obligor from obtaining or retaining employment;
c. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and
d. An arrearage payment for subsequent months as determined by one (1) of the following:
(i) An amount established by a court order;
(ii) If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or
(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.
(5) If a seizure of assets request is identified, as specified in subsection **(4)(a) [**~~(1)(a)~~**]** of this section, and is initiated from outside the commonwealth as a result of a Federal Institution Data Match, the cabinet shall use the Administrative Enforcement of Interstate Cases process to issue:
(a) A "CS-68, Order to Withhold" and a "CS-69, Answer to Withhold" to a financial institution holding the obligor's account or accounts;
(b) A "CS-68, Order to Withhold" and a "CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and
(c) To the financial institution a:
1. "CS-83, Order to Deliver" if there is no dispute; or
2. "CS-70, Release of Order to Withhold" if the initiating state's request is withdrawn.

Section 3. Administrative Enforcement Actions.
(1) ~~[of the order to withhold:~~
~~(a) Contest the order to withhold by writing to the CSP;~~
~~(b) Pay the total arrearage specified in the order to withhold;~~
~~(c) Post a bond for the total arrearage specified in the order to withhold; or~~
~~(d) Sign a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:~~
~~1. Less than $1,000, fifty (50) percent;~~
~~2. Equal to or greater than $1,000 and less than $2,000, $500 plus twenty-five (25) percent of the amount over $1,000; or~~
~~3. Equal to or greater than $2,000, $750 plus ten (10) percent of the amount over $2,000.~~

~~Section 8. Administrative Enforcement Actions. (1) If an obligor of a child receiving public assistance owes past-due support, the obligor shall be obliged to participate in a minimum of twenty (20) hours of work, educational or vocational training activities per week as established in KRS 405.430(8).~~
~~(2)~~] If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:
(a) File a lien on the obligor's interest in personal or real property:
1. Within the commonwealth, as established in KRS 205.745, file a [~~form~~] "CS-92, Intrastate Notice of Lien"; or
2. Outside the commonwealth, as established in KRS 205.7785, file a [~~form~~] "CS-85, Notice of Lien";
(b) Provide a [~~form~~] "CS-119, Noncustodial Parent's Notice [~~Obligor's Notice~~] of Lien" to the obligor notifying that:
1. The obligor may contest the lien as specified in Section 4 [9] of this administrative regulation;
2. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and
3. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a [~~form~~] "CS-120, Release of Lien", shall be provided to the obligor;
(c) Provide a [~~form~~] "CS-122, Advance Notice of Intent to Collect Past-due Support" to the obligor notifying that:
1. Past-due amounts shall be reported to a certified consumer reporting agency; and
2. The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in Section 4 [9] of this administrative regulation;
(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.768, if:
1. The advance notice is returned as undeliverable; and
2. Subsequent location efforts are unsuccessful; and
(e) Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice.
(2) [~~(3)~~] If an obligor owes an arrearage equal to or greater than six (6) month's obligation, as established in KRS 205.712(9) and (10), the cabinet shall:
(a) Determine if an obligor holds and, if so, take action against one (1) or more of the following:
1. Professional license or certificate;
2. Occupational license or certificate;
3. Recreational license;
4. Sporting license; or
5. Driver's license, for arrearages that have accrued since January 1, 1994;
(b) Send to the obligor, by certified mail:
1. A [~~form~~] "CS-44, Notice of Intent to Request Denial or Suspension", which includes a section for an Answer to Notice of Intent;
2. Notification that the obligor may request an administrative hearing contesting the action as specified in Section 4 [9] of this administrative regulation; and
3. Notification that the [~~form~~] "CS-63, Notice to Licensing/Certification Board or Agency" shall be rescinded if the obligor:
a. Takes action as specified in Section 2(4)(g)3 of this administrative regulation; or
b. ~~[Pays the total arrearage accrued;~~
~~b. Posts a bond for the total arrearage;~~
~~c. Signs a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:~~
~~(i) Less than $1,000, fifty (50) percent of the arrearage;~~
~~(ii) Equal to or greater than $1,000 and less than $2,000, $500 plus twenty-five (25) percent of the amount over $1,000; or~~
~~(iii) Equal to or greater than $2,000, $750 plus ten (10) percent of the amount over $2,000; or~~
~~d.~~] Complies with a subpoena or warrant;
(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;
(d) Send to the issuing agency or board of licensure or certification a [~~form~~] "CS-63, Notice to Licensing/Certification Board or Agency", if:
1. There is no dispute; or
2. The obligor does not take an action specified in paragraph (b)3 of this subsection;
(e) Send to the issuing agency or board of licensure or certification a [~~form~~] "CS-63, Notice to Licensing/Certification Board or Agency", within twenty (20) days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:
1. A license or certificate denial;
2. Suspension; or
3. Revocation; and
(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:
1. Takes action as specified in Section 2(4)(g)3 of this administrative regulation; or
2. Compiles with a subpoena or warrant.
(3) ~~[Makes full payment;~~
~~2. Posts a bond for the full arrearage;~~
~~3. Makes a good faith payment equal to three (3) month's cur-~~

~~rent support, and enters into an agreement as specified in paragraph (b)3c of this subsection; or~~

~~4. Complies with a subpoena or warrant.~~

~~(4)~~] If an obligor owes an arrearage equal to or greater than six (6) months obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have 10 (ten) days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g)3 of this administrative regulation to release the vehicle boot. [~~Enter into an agreement with the cabinet to release the vehicle boot if the obligor:~~

~~a. Pays the total arrearage accrued;~~

~~b. Posts a bond for the total arrearage; or~~

~~c. Signs a form "CS-78, Payment Agreement" to pay current support plus a monthly payment on arrearage, if the arrearage is:~~

~~(i) Less than $1,000, fifty (50) percent of the arrearage;~~

~~(ii) Equal to or greater than $1,000 and less than $2,000, $500 plus twenty-five (25) percent of the amount over $1,000; or~~

~~(iii) Equal to or greater than $2,000, $750 plus ten (10) percent of the amount over $2,000; and~~]

(c) If [~~any of~~] the requirements in paragraph (b) of this subsection are met the:

1. [~~, the~~] Obligor shall pay the:

a. [~~1.~~] Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

b. [~~2.~~] Cost of towing and storage if a charge is incurred; and [~~.~~]

2. [~~(d) If the obligor enters into an agreement with the cabinet, the~~] Cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) [~~(5)~~] A newspaper publication of a list of delinquent obligors, as established in KRS 405:411, provided by the Cabinet for Health and Family Services [~~Families and Children~~], Department for Community Based Services, Division of Child Support, shall:

(a) Identify an obligor as specified by subsection (7)[~~(8)~~](a) of this section;

(b) Include the name, last known address and the amount owed of the obligor meeting the criteria; and

(c) Be published no less than twice yearly.

(5) [~~(6)~~] If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(6) [~~(7)~~] If the obligor owes an arrearage of $5,000 or more the cabinet shall:

(a) Send in advance, a [~~form~~] "CS-122, Notice of Intent to Collect Past-due Support", notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, as established in KRS 205.712(8);

(b) Forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than $5,000;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than $5,000; or

4. The obligor takes action as specified in Section 2(4)(g)3 of this administrative regulation.

(7) [~~There is no ordered arrearage payment, the obligor:~~

~~a. Posts a bond for the total amount due; or~~

~~b. Signs a form "CS-78, Payment Agreement", to pay current support plus a monthly payment on the arrearage, specified as follows:~~

~~(i) In the first month, a $750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and~~

~~(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.~~

~~(8)~~] If an obligor owes an arrearage equal to or greater than $10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor's nonpayment within the last six (6) months;

2. The obligor's known address;

3. The cabinet is the payee for support; and

4. Audited arrearages by the cabinet within the last year;

(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, as established in KRS 205.712(16);

(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection the [~~form~~] "CS-175, Notice to place Noncustodial Parent's Name on [~~of Intent to Place the Obligor's Name on a~~] Delinquent Listing";

(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g)3 of this administrative regulation; [~~:~~

~~1. Pays the total arrearage accrued;~~

~~2. Posts a bond for the total arrearage; or~~

~~3. Signs form "CS-78, Payment Agreement", to pay current support plus a monthly payment on the arrearage, specified as follows:~~

~~a. In the first month, a $750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and~~

~~b. In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent;~~]

(e) Accept an obligor's request for an administrative hearing as specified in Section 4 [9] of this administrative regulation;

(f) Refer the case for parent-locator service if the notice is returned and the forwarding address unknown;

(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:

1. No dispute;

2. A hearing that results in a finding that the case qualifies for the delinquent listing; or

3. No action taken by the obligor as specified in Section 2(4)(g)3 of this administrative regulation [~~paragraph (d) of this subsection~~]; and

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor Section 2(4)(g)3 of this administrative regulation.

(8) [~~:~~

~~1. Pays the total arrearage accrued;~~

~~2. Posts a bond for the total arrearage; or~~

~~3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (d)3 of this subsection.~~

~~(9)~~] If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:

(a) Pursue action in accordance with the provisions of subsection (2) [~~(3)~~] of this section; and

(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

Section 4. [~~9.~~] Appeal Procedures. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(2) An obligor may request and be granted an administrative hearing in accordance with KRS 405.450 based upon a mistake in fact, as defined in KRS 205.712(13), pertaining to an incorrect:

(a) Person identified as an obligor; or

(b) Current or past due support obligation.

(3) A request shall be made to the cabinet:

(a) In writing;

(b) In person; or

(c) Orally, later reduced to writing within the time frames as specified in subsection (4) of this section.

(4) The written request for an administrative hearing shall be considered timely if made within the timeframes established in an

initial notice as follows:

(a) Ten (10) days for:

1. Income withholding; or

2. Intent to boot a vehicle; [.]

(b) Fifteen (15) days for unemployment insurance withholding; [.]

(c) Twenty (20) days for:

1. Order to withhold;

2. Lien;

3. Intent to request denial or suspension of a license or certificate; or

4. Intent to place the obligor's name on a delinquent listing; or [.]

(d) Thirty (30) days for intent to collect past-due support.

(5) Prior to a hearing, the cabinet shall schedule and hold an informal dispute conference with an obligor within ten (10) days to attempt to resolve a dispute.

(6) If the cabinet's [cabinet] informal dispute conference does not resolve the hearable issue, the cabinet shall schedule an administrative hearing.

[Section 5. Return of Overpayment. The cabinet shall return an overpayment to the obligor in accordance with 45 C.F.R. 303.100(a)(8).]

Section 5. [6.] [10.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension, edition 4/05 [12/03]";

(b) "CS-63 Notice to Licensing/Certification Board or Agency, edition 4/05 [12/03]";

(c) "CS-68 Order to Withhold, edition 4/05 [12/03]";

(d) "CS-69 Answer to Withhold, edition 4/05 [12/03]";

(e) "CS-70 Release of Order to Withhold, edition 4/05 [12/03]";

(f) "CS-72 National Medical Support Notice, edition 4/05 [3/02]";

(g) "CS-73 Unemployment Insurance Letter, edition 4/05 [12/03]";

(h) "CS-76 Unemployment Insurance Notice of Withholding, edition 4/05 [12/03] ";

(i) "CS-78 Payment Agreement, edition 4/05 [12/03]";

(j) "CS-83 Order to Deliver, edition 4/05 [12/03]";

(k) "CS-85 Notice of Lien, edition 4/05 [12/03]";

(l) "CS-89 Order and Notice to Withhold Income for Child Support, edition 4/05 [3/02]";

(m) "CS-92 Intrastate Notice of Lien, edition 4/05 [12/03]";

(n) "CS-119 Noncustodial Parent's Notice of Lien, edition 4/05 [Obligor's Notice of Lien, edition 12/03]";

(o) "CS-120 Release of Lien, edition 4/05 [12/03]";

(p) "CS-121 Noncustodial Parent's [Parent or Obligor] Answer to Withhold, edition 4/05 [12/03]";

(q) "CS-121.1 Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases, edition 4/05";

(r) "CS-122 Advance Notice of Intent to Collect Past-Due Support, edition 4/05 [12/03]";

(s) [(r)] "CS-164 Notice of Income Withholding, edition 4/05"; and (t) [12/03";

(s)] "CS-175 Notice to Place Noncustodial Parent's [of Intent to Place Obligor's] Name on Delinquent Listing, edition 4/05 [12/03]".

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

MIKE ROBINSON, Commissioner
DUANE L. KILTY, JR., Ph.D, Undersecretary
JAMES W. HOLSINGER, Jr., M.D., Secretary
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 13, 2004 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502)-564-7905, fax (502)-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, February 7, 2005)

921 KAR 1:420 Child Support Distribution.

RELATES TO: KRS 13B.010(2), 13B.170, 205.720, 205.750, 205.755, 205.795, 405.520, 407.5101, 45 C.F.R. 302.32, 302.38, 302.51-302.54, 407.5101, 42 U.S.C. 651

STATUTORY AUTHORITY: KRS 194B.050(1), 205.755(1), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS 205.755(1) authorizes the secretary to **promulgate administrative regulations concerning distribution of** [distribute] payment of support consistent with state and federal law and **administrative** regulations. KRS 194B.050(1) authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for distribution of child support payments.

Section 1. Allocation of income withheld payments in IV-D and non-IV-D cases. (1) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

(a) Totaling the obligor's current support obligations subject to income withholding;

(b) Dividing each current support obligation by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the withheld payment received from the employer by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(2) The cabinet shall allocate the payment amount determined in subsection (1)(c) of this section to each of the obligor's current support obligation amounts subject to income withholding.

(3) If the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withholding amount among the obligor's ordered arrears obligations subject to income withholding by:

(a) Totaling the obligor's ordered arrears obligations subject to income withholding;

(b) Dividing the monthly arrears obligation for each child support case by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the remaining income withholding amount by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each arrears obligation subject to income withholding.

(4) The cabinet shall allocate the payment amount determined in subsection (3)(c) of this section to each of the obligor's arrears obligations subject to income withholding.

(5) If the obligor's current support and arrears obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withheld amount proportionately according to subsections (1) and (2) of this section.

(6) Allocation of nonwage payments in IV-D and non-IV-D cases. The cabinet shall allocate nonwage payments:

(a) As designated by an obligor for a specific case; or

(b) If not designated by an obligor, by allocating a proportionate share to each of the obligor's child support cases, as determined in subsection (1)(a) and (b) of this section.

Section 2. K-TAP and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

(a) Payable to the Division of Child Support; and

(b) Reported to the K-TAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

(2) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance payments and report the result to the child support agency.

(a) If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:

1. Distribute to the family at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 4(2).

(b) Unless a hearing is requested or a case remains eligible for assistance, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the Division of Child Support; and

(2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts. (1) A tax refund intercepted in a public assistance account shall be:

(a) Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or

2. Held by the cabinet for six (6) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearage; or

(b) If no assigned arrearage remains:

1. Held by the cabinet for six (6) months, if a joint income tax return is filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing as specified in 921 KAR 1:410. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution is in the obligor's favor; or

(b) The agency or family, if resolution is against the obligor.

Section 5. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Return of Overpayment. If a child support overpayment is found to be due to the noncustodial parent, the amount shall be verified and, if legitimate, approved by the Division of Child Support, Accounting Branch. Upon approval by the Accounting Branch, a check for the writer shall be sent to the Department of Treasury for processing. A check for the approved amount of child support overpayment shall be issued to the noncustodial parent within one (1) to seven (7) days, unless the overpayment is due to a joint tax return. If the overpayment is due to a joint tax return, the approved amount shall be issued through a manual voucher:

(1) Once the unobligated spouse's share of the refund has been paid; or

(2) Six (6) months from notification of the federal tax offset in accordance with 45 C.F.R. 303.72(h)(5).

JAMES W. HOLSINGER, JR., M.D., Secretary
MIKE ROBINSON, Commissioner
DUANE L. KILTY, JR., Ph.D., Undersecretary
APPROVED BY AGENCY: December 10, 2004
FILED WITH LRC: December 13, 2004, at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, pone (502) 564-7905, fax (502) 564-7573.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 2005

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:050. License application.

RELATES TO: 325.261, 325.280, 325.330
STATUTORY AUTHORITY: KRS 325.240
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.261 establishes the standards for licensure as a certified public accountant. KRS 325.280 establishes the standards for licensure as a certified public accountant by reciprocity. KRS 325.330 establishes the process for issuing a license. This administrative regulation describes the procedure to obtain a license as a certified public accountant.

Section 1. (1) A person who has met the qualifications contained [~~established~~] in KRS 325.261 shall [~~may~~] submit the "Application for Initial License as a Kentucky Certified Public Accountant".

(2) With his or her application, the person [~~applicant~~] shall include:

(a) A check or money order, which is nonrefundable, made payable to the "Kentucky State Board of Accountancy" for $100, [~~which is nonrefundable~~];

(b) The certificate of experience as described in 201 KAR 1:063 [~~062~~];

(c) One (1) photograph taken within ninety (90) days preceding the application, the back of which shall contain the signature in ink of the applicant;

(d) A list of colleges and universities with graduation dates, degrees awarded, and the official transcript described in 201 KAR 1:190 [~~130~~], unless it is already in possession of the board; and

(e) Proof of successful completion of the Uniform Certified Public Accountants Examination. If the applicant successfully completed the examination in Kentucky, no documentation is required. If the examination was successfully completed in another jurisdiction, the applicant [~~he~~] shall have an "Authorization of Interstate Exchange of Information" submitted to the board on his or her behalf.

Section 2. License by Reciprocity. (1) An applicant for a license by reciprocity shall submit or cause to have submitted:

(a) An "Application for License as a Kentucky Certified Public Accountant by Reciprocity";

(b) Payment of the fee and other documents [~~Information~~] required by Section 1(2) of this administrative regulation, except for an official transcript; and

(c) [~~(b)~~] An [~~A form,~~] "Authorization for Interstate Exchange of Information", form completed by the licensing jurisdiction where the applicant holds a valid and active license to practice.

(2) If the applicant [~~candidate~~] cannot provide the certificate of experience as required [~~requested~~] in Section 1 of this administrative regulation; and:

(a) Is applying under the provisions of KRS 325.280(1)(c)1, the applicant [~~he~~] shall have the licensing jurisdiction where he or she holds a valid and active license send certified copies of experience requirement documents from his or her license file; or

(b) Is applying under the provisions of KRS 325.280(1)(c)2, he or she shall submit or cause to have submitted one (1) of the following documents which clearly reflects that the applicant [~~candidate~~] has practiced public accounting as a full-time profession for four (4) of the last ten (10) years:

1. Proof of public accounting errors and omissions insurance;
2. A letter from an attorney, client, or certified public accountant that [~~who~~] has knowledge of the applicant's [~~candidate's~~] practice;
3. Copies of firm license applications; or
4. Copies of personal tax returns.

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

(a) "Application for Initial License as a Kentucky Certified Public Accountant (2005) [~~(2000)~~]"; [~~and~~]

(b) "Application for Licenses as a Kentucky Certified Public Accountant by Reciprocity (2005); and

(c) "Authorization for Interstate Exchange of Information, (2005) [~~(2000)~~]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the President of the Kentucky State Board of Accountancy has reviewed this administrative regulation, prior to its filing by the Board of Accountancy with the Legislative Research Commission, as required by KRS 325.240.

JIM SPARROW, CPA, President
APPROVED BY AGENCY: February 7, 2005
FILED WITH LRC: February 9, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2005, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 March 31, 2005. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard C. Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the procedures one must follow to apply to receive a license to practice public accounting.

(b) The necessity of this administrative regulation: To advise individuals interested in receiving a license to practice public accounting of the procedures to follow to receive the license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes authorize the board to establish the procedures to follow if a person is interested in obtaining a license to practice public accounting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It describes the type of forms to be submitted to receive a license to practice public accounting.

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

(a) How the amendment will change this existing administrative regulation: It corrects 2 references made to other regulations which are presently incorrect.

(b) The necessity of the amendment to this administrative regulation: The regulation referred to other regulations that were no longer in existence.

(c) How the amendment conforms to the content of the authorizing statutes: The correct administrative regulations are being referred to in the amendment.

(d) How the amendment will assist in the effective administra-

tion of the statutes: It refers to the proper administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons interested in applying to receive a CPA license. The number of people affected is unknown.

(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: None. It simply corrects references to regulations no longer in existence.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Nothing

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds come from the Board of Accountancy's Trust and Agency account.

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

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

(9) TIERING: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as a CPAs.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:063. Certificate of experience.

RELATES TO: KRS 325.261(4) [~~1994 Ky. Acts ch. 248, sec. 4~~]

STATUTORY AUTHORITY: KRS 325.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.261 establishes the standards for licensure as a certified public accountant. This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) "One (1) year" means the completion of 2000 hours of employment [~~work~~] obtained after the award of a baccalaureate degree during an employment period of not less than twelve (12) months. The hours of employment shall not include any leave or holiday time.

(2) "Verification" means a [~~an actively licensed~~] certified public accountant as described in KRS 325.261(4) [~~of this or any state~~] confirming the truth or accuracy of the applicant's accounting or attest experience.

Section 2. (1) An applicant for licensure shall have submitted by the certified public accountant verifying the experience a "Certificate of Experience".

(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.261 and this administrative regulation, a certificate shall be submitted for each employment situation.

Section 3. Experience Verification. The certificate of experience shall include the following information verified by a certified public accountant as described in KRS 325.261(4) [~~an actively licensed certified public accountant~~]:

(1) The name and address of the employing firm, company, agency, or institution of higher education;

(2) The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;

(3) Total number of hours worked during the employment period excluding holiday or leave time;

(4) A brief description of the applicant's job duties;

(5) The applicant's working titles during employment; and

(6) The signature of the verifying certified public accountant which attests to the truth and accuracy of the statements made regarding the applicant's experience.

Section 4. Documentation and Verification of Applicant Experience. A false or misleading statement made by a certified public accountant on a certificate of experience shall constitute a violation of KRS 325.340(1)(h).

Section 5. Incorporation by Reference. (1) "Certificate of Experience (2005) [~~(2000)~~]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

This is to certify that the President of the Kentucky State Board of Accountancy has reviewed this administrative regulation, prior to its filing by the Board of Accountancy with the Legislative Research Commission, as required by KRS 325.240.

JIM SPARROW, CPA, President

APPROVED BY AGENCY: February 7, 2005

FILED WITH LRC: February 9, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 10 a.m., EST at the administrative offices of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2005, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 March 31, 2005. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard C. Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the experience that one must obtain to receive a license to practice public accounting.

(b) The necessity of this administrative regulation: To advise individuals interested in receiving a license to practice public accounting of the type of experience necessary to receive the license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute describes in general the experience that must be obtained to apply for a license to practice public accounting. This regulation details the requirements used by the board to determine if a candidate has obtained the proper type of experience to receive a license to practice public accounting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It describes the type of experience necessary to receive a license to practice public accounting.

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

(a) How the amendment will change this existing administrative regulation: It will make the regulation conform to the statute as to the type of CPA that is authorized to certify the experience required to obtain a license.

(b) The necessity of the amendment to this administrative regulation: The regulation was not in conformity with the requirements of the statute as to the type of CPA that could verify the experience required to obtain a license. This amendment corrects that discrepancy.

(c) How the amendment conforms to the content of the authorizing statutes: It correctly describes the type of CPA authorized to verify the experience necessary to receive a license.

(d) How the amendment will assist in the effective administration of the statutes: It now refers to the proper type of CPA required to verify the necessary experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons interested in receiving a CPA license. The number is unknown.

(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: None since the board was already following the statutory requirements as to the CPA that could verify the experience necessary to receive a license.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds for enforcement are the Board of Accountancy's Trust and Agency fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as a CPAs.

GENERAL GOVERNMENT CABINET
State Board Of Accountancy
(Amendment)

201 KAR 1:170 [~~License~~] Application to receive a privilege to practice under substantial equivalency standards.

RELATES TO: KRS 325.220, 325.280, 325.330

STATUTORY AUTHORITY: KRS 325.240

NECESSITY, FUNCTION AND CONFORMITY: KRS 325.220 defines substantial equivalency. KRS 325.280(3) establishes the standards to obtain a privilege to practice [~~license~~] under the substantial equivalency standards and when the privilege expires. [~~KRS 325.330 establishes the standards for renewing a certified public accountant license.~~] This administrative regulation describes the procedures to obtain a privilege to practice [~~license~~] as a certified public accountant under the substantial equivalency standards.

Section 1. Procedure for Determining States with Comparable Licensing Standards. (1) The board shall review the licensing requirements of other states no less than once per calendar year at a regularly scheduled meeting.

(2) This review shall examine the requirements of each state related to examination, experience and education to determine that the requirements are comparable to those in this state.

(3) The board may use information developed by the National Association of State Boards of Accountancy (NASBA) in making this determination.

Section 2. (1) A person who is actively licensed as a certified public accountant in another state may submit the "Application for a Privilege to Practice [~~License~~] as a Kentucky Certified Public Accountant under Substantial Equivalency Standards".

(2) With the application, the person shall include a nonrefundable payment to the "Kentucky State Board of Accountancy" of [~~for~~] $100 dollars.

(3) The privilege [~~license~~] shall be in effect upon receipt of the application at the board office.

(4) The privilege [~~license~~] shall expire on July 1 of the second year following the date it was issued.

(5) The privilege [~~license~~] may be renewed by complying with 201 KAR 1:065.

Section 3. Incorporation by Reference. (1) "Application for a Privilege to Practice [~~License~~] as a Kentucky Certified Public Accountant under Substantial Equivalency Standards (2005) [~~(2000)~~]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the President of the Kentucky State Board of Accountancy has reviewed this administrative regulation, prior to its filing by the Board of Accountancy with the Legislative Research Commission, as required by KRS 325.240.

JIM SPARROW, CPA, President

APPROVED BY AGENCY: February 7, 2005

FILED WITH LRC: February 9, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2005, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 March 31, 2005. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard C. Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the procedures a CPA from another state who does not have an office in Kentucky may follow to obtain a license to practice public accounting.

(b) The necessity of this administrative regulation: To advise CPA's located out of state of the procedures to follow to receive a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute describes the procedures a CPA licensed in another state can follow to receive a license to practice in this state. The statute authorizes the board to implement such procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will allow CPA's located in another state the ability to become licensed in this 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: It will make the regulation conform to the statute since changes were made to the statute during the 2004 session of the GA.

(b) The necessity of the amendment to this administrative regulation: The statute upon which the regulation is based was amended in 2004 which required this amendment to the existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: It correctly describes the procedures that a CPA licensed in another state can follow to receive a license to practice in this state.

(d) How the amendment will assist in the effective administration of the statutes: It correctly refers to the procedure CPA's located in another state must follow to become licensed in this state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CPA's located in another state interested in practicing in this state. The number is unknown.

(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: Unknown since the board is unaware if any CPA's located in another state did not apply for a license under the existing regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds for enforcement are the Board of Accountancy's Trust and Agency fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as a CPAs.

GENERAL GOVERNMENT CABINET
State Board Of Accountancy
(Amendment)

201 KAR 1:190. Computer-based examination sections, applications, and procedures.

RELATES TO: KRS 325.261(5), 325.270

STATUTORY AUTHORITY: KRS 325.240, 325.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.270 requires the board to conduct examinations for individuals seeking to become certified public accountants. KRS 325.261(5) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions. (1) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepared and graded the paper and pencil based Uniform CPA Examination and now prepares and grades the computer-based certified public accountant examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "Conditional credit" means the procedure utilized by the board for the paper and pencil based licensure examination that allowed an exam candidate who received a passing score of seventy-five (75) or higher on two (2) or more of the sections of the examination and a grade of fifty (50) or higher on each section taken but not passed during the same examination to retain the passing scores earned only for the next six (6) examinations regardless of whether the candidate sat for the future examinations.

(5) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(6) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the computer-based certified public accountants examination.

(7) "Official transcript" means an official record from a college or university that specifies the college course work completed, degrees awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(8) "Prometric or its successor" means the testing service in charge of administering the computer-based certified public accountants examination.

(9) "Quarter hour" means 66/100ths of a semester hour.

(10) "Testing window" means the two (2) months out of each three (3) month period during a calendar year[~~, beginning in April 2004,~~] when an exam candidate may sit for the computer-based certified public accountants examination.

(11) "Uniform CPA Examination" means the paper and pencil based version of the licensure examination administered by the board prior to January 1, 2004.

Section 2. [~~Applicability Date. Applications for the first administration of the computer-based certified public accountants licensure examination may be submitted to the board beginning January 5, 2004. The first administration of the computer-based certified public accountants examination is scheduled to occur April 5, 2004.~~

~~Section 3.~~] Examination Sections. The board has adopted the computer-based certified public accountants examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections to be included on this examination shall be:

(1) Auditing and attestation. This section replaces the auditing section on the paper and pencil-based examination;

(2) Financial accounting and reporting;

(3) Regulation. This section replaces the accounting and reporting section on the paper and pencil-based examination; and

(4) Business environment and concepts. This section replaces the business law and professional responsibilities section on the paper and pencil-based examination.

Section 3. [~~4.~~] Grading Procedures and Acquiring Credit for Obtaining a Passing Score. (1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window.

(5) Conditional credit received under the paper and pencil examination shall be transferred to the four (4) sections of the computer-based examination as follows:

(a) Accounting and Reporting to Regulation;

(b) Financial Accounting and Reporting remains the same;

(c) Auditing to Auditing and Attestation; and

(d) Business Law and Professional Responsibilities to Business Environment and Concepts.

(6) Transition period for conditional credit.

(a) An exam candidate awarded conditional credit on the paper and pencil examination shall be allowed a transition period to complete the remaining sections of the computer-based certified public accountants examination.

(b) The transition period shall begin to run January 1, 2004 and last until the candidate utilizes the opportunities to sit for the examination remaining to him or her if the paper and pencil examination was [~~were~~] still in effect.

(c) This shall be six (6) testing windows or less, or the number of opportunities remaining under the paper and pencil examination multiplied by six (6) months, whichever occurs first.

(d) This time period shall control even when a passing score on a section of the computer-based examination is received [~~but only if the use of this transitional time period does not operate to decrease the eighteen (18) month time period referred to in subsection (7) of this section~~].

(e) Failure to receive a passing score on the remaining sections of the examination at the conclusion of this transition period shall result in the conditional credit expiring.

(7)(a) When an exam candidate without conditional credit initially [~~who~~] receives a passing score on a section of the computer-based certified public accountants examination the candidate shall have a minimum of eighteen (18) months following the last day [~~date~~] of the month [~~administration~~] of the administration of that examination section to obtain a passing score on the remaining sections of the computer-based examination.

(b) Failure to receive a passing score on the remaining sections of the computer examination within the eighteen (18) months shall result in the expiration of the initial passing score but not other sections passed during that eighteen (18) month period.

(c) All sections of the computer-based examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(8) An additional number of opportunities to sit for the examination and maintain any earned conditional credit or passing scores beyond the restrictions contained in this section may be granted at the discretion of the board for good cause.

Section 4. [~~5.~~] Initial Examination Applicants. An applicant shall submit an application to sit for the examination. The applicant shall have a Kentucky street address and submit:

(1) A completed "Application for the Certified Public Accountant Examination" that includes the following information:

(a) The applicant's name, address, primary and secondary telephone numbers, date of birth, mother's maiden name, and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States;

(b) The state of which the applicant is a legal resident;

(c) An e-mail address;

(d) Whether the applicant has:

1. Ever changed his or her name; and if so, a list of the prior names;

2. Taken the Uniform CPA Examination or the computer-based certified public accountant examination before; and if so, the date and state where it was taken;

3. Been convicted, plead guilty or no contest to a felony or misdemeanor, other than a minor traffic violation; and if so, a copy of the judgment, sentence of conviction, and a letter of explanation shall be attached to the application;

4. Been denied admission to the Uniform CPA Examination or the computer-based certified public accountant examination; and if so, a letter explaining the reason, date, and jurisdiction of denial shall be attached to the application; and

5. Had disciplinary action taken against any professional license; and if so, a letter indicating the jurisdiction, date of action, and an explanation of the circumstances shall be attached to the application;

(e) The specific section or sections of the examination the applicant is applying to take;

(f) If the applicant requests accommodations to the exam administration because of a disability that limits one (1) or more of his or her major life activities (e.g., walking, hearing, speaking, seeing, reading, or writing), a description of the disability and requested accommodations from the applicant and written documentation from an appropriately-licensed health care professional supporting the requested accommodation:

1. The documentation shall include a diagnosis of the disability and a specific recommendation and justification for the requested accommodation.

2. The board shall not be responsible for the costs of obtaining the diagnosis and recommendation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant;

(g) The names of the colleges from which a transcript shall be attached to the application;

(h) The signature of the applicant certifying that:

1. The information in the application is true;

2. The applicant:

a. Is applying for admission to the computer-based certified public accountants examination in conformity with Kentucky law;

b. Has submitted the required application, attachments, and fees;

c. Has read and agrees to abide by the applicable laws and administrative regulations; and

d. A certification by a notary public that the application was subscribed and sworn to before the notary.

(2) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 [~~and the awarding of a baccalaureate or master's degree~~] which includes a major or concentration in accounting as defined in this administrative regulation.

(a) The educational requirements shall have been completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations at the time the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges;

2. The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours purportedly earned and the accreditation of an educational institution; or

3. A postsecondary educational institution outside the United States whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.

(b) The certification required by subparagraph (a)3 of this subsection shall state that the:

1. Foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation; and

2. Applicant had a major or concentration in accounting as defined in this administrative regulation.

(c) A copy of the "Request for Advisory Evaluation of Foreign Credentials" form that FACS requires an applicant to use to request certification from its service.

(3) A fee in the amount of:

(a) Thirty (30) dollars for the application; and

(b) Thirty (30) dollars for each section of the examination the candidate intends to take.

(4) The fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the "Kentucky State Board of Accountancy". If the institution the check or money order is drawn on does not honor the check or money order the application shall be deemed incomplete and returned.

Section 5. [6.] (1)(a)The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be forwarded to NASBA for entry into the data bank operated by that association. NASBA shall then advise the board that the candidate is eligible to schedule a date and time to sit for the examination with Prometric or its successor.

(3) The executive director shall notify a candidate that he or she is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination. This notification shall be known as a notice to schedule.

(4)(a) A candidate shall have six (6) months from the date of issuance by the board of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule may be extended for good cause.

(d) To obtain approval to sit for additional sections of the examination a candidate shall submit a reexamination application as described in Section 10 of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the computer-based certified public accountants examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of an invoice from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the notice to schedule and require the candidate to submit a reexamination application accompanied by the appropriate fees.

Section 6. [7.] Examination Rules of Conduct. (1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. [8.] Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. [9.] An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. [10]. Reexamination Applicants. (1) Upon request the board shall mail a reexamination application to every candidate who fails to pass the computer-based examination.

(2) The reexamination application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexamination application is not delivered by the United States Postal Service.

(4)(a) To obtain approval to sit as a reexam candidate, the individual shall return the reexamination application to the board. The reexamination application shall contain the following information:

1. The applicant's name, a Kentucky street address, daytime telephone number, date of birth, mother's maiden name and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States;

2. The specific sections of the examination the applicant is requesting to sit for;

3. A statement that the required fee is attached;

4. If the applicant requests accommodations to the exam administration because of a disability, whether the required information is on file or is attached to the reexamination application; and

5. The applicant's signature.

(b) The reexamination application shall be received in the board's office prior to the reexamination candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexamination application with the reexamination fee.

(b) The reexamination fee shall be thirty (30) dollars per section. The reexamination fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order the application shall be deemed incomplete and returned.

(6) A reexamination candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexamination.

(7) The procedures and policies in Section 6 of this administrative regulation shall be applicable to a reexamination application.

(8) The reexamination candidate shall comply with the requirements of Sections 7, 8, and 9 of this administrative regulation.

Section 10. [11.] The executive director shall review examination grades received from NASBA before they are released to a candidate. Upon approval of the executive director, a copy of an examination candidate's grades shall be mailed to him or her at the last known address provided by the candidate.

Section 11. [12.] On the date this administrative regulation becomes effective examination candidates without conditional credit, with less than 150 college semester credit hours and who on the effective date are eligible to apply sit for the computer-based examination shall have until March 31, 2007 to successfully complete all sections of the examination. Failure to receive a passing score on all sections of the examination by March 31, 2007 shall result in any credit earned for successfully passing any sections of the examination expiring and the candidate being prohibited from sitting again for the examination until the candidate has obtained 150 college semester credit hours with a major or concentration in accounting as defined in this administrative regulation.

Section 12. [13.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for the Certified Public Accountant Examination", 2005 [2003] Kentucky State Board of Accountancy;

(b) "Reexamination Application for the Certified Public Accountant Examination", 2005 [2003], Kentucky State Board of Accountancy; and

(c) "Request for Advisory Evaluation of Foreign Credentials",

2003.

(2) These documents may be inspected, copied, or obtained, subject to applicable copyright law, at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

This is to certify that the President of the Kentucky State Board of Accountancy has reviewed this administrative regulation, prior to its filing by the Board of Accountancy with the Legislative Research Commission, as required by KRS 325.240.

JIM SPARROW, CPA, President

APPROVED BY AGENCY: February 7, 2005

FILED WITH LRC: February 9, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2005, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 March 31, 2005. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard C. Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the procedures associated with applying for and taking the computer based Uniform CPA Examination.

(b) The necessity of this administrative regulation: To advise individuals interested in applying for and taking the exam the procedures associated with this process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes authorize the board to adopt standards governing the examination process. This regulation establishes those standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It describes the procedures a candidate must follow to apply and sit for the licensing exam to become a CPA.

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

(a) How the amendment will change this existing administrative regulation: It eliminates an applicability date for the regulation since that time has passed, provides better detail as to the requirements candidates who do not have 150 hours in education must meet to sit for the exam after March 31, 2007, allows for the extension of time if necessary for a candidate to sit for the exam, and corrects an error in the calculation of time associated with carrying forward credit earned when a section of the exam is passed.

(b) The necessity of the amendment to this administrative regulation: The regulation incorrectly authorized too much time for credit given on passing sections of the exam, and allows for the extension of time to sit for an exam section which incorporates the procedure in place by the testing authority.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the board to establish the standards governing the exam and this amendment corrects some errors made when the regulation was initially enacted.

(d) How the amendment will assist in the effective administration of the statutes: It will allow candidates additional time to sit for sections of the exam if an unexpected emergency occurs. It will also clarify for candidates the standards used for the carrying forward credit earned on the exam and if some candidates fail to pass the exam by March 31, 2007 the requirements they must then met to sit for the exam.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons interested in applying to receive a CPA license. The number of people affected is unknown.

(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: It will allow some exam candidates additional time to sit for a section of the exam if they were unable to attend the exam due to an emergency. It will also clarify for others the requirements they will have to met if they fail to pass the exam by March 31, 2007, and the carrying forward of credit earned when candidates pass sections of the exam.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds for enforcement are the Board of Accountancy's Trust and Agency fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as a CPAs.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)

201 KAR 9:018. Physician advertising.

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation delineates limits of permissible professional advertising with the aim of adequately informing the public about physician services while at the same time establishing safeguards to protect the public or any member thereof from false, fraudulent, misleading, deceptive, self-laudatory or unfair statements.

Section 1. This administrative regulation shall apply to all physicians licensed to practice medicine or osteopathy in the Commonwealth. It shall apply in regard to all advertising of whatever type and wherever published.

Section 2. Advertising may be by any medium provided that the advertisement is not in any manner fraudulent, misleading or deceptive.

Section 3. The following may not be advertised:

(1) Testimonials of patients as to the physician's skill or the quality of his or her professional services;

(2) Claims regarding the physician's experience, competency and quality of services which imply that he or she possesses an exclusive and unique skill or remedy;

(3) Claims which cannot be readily verified by objective standards; and,

(4) Any representation expressly prohibited under KRS

311.597(2).

Section 4. An advertisement may be sent to an individual addressee only if that addressee is one of a class of persons, other than a family to whom it is sent at the same time. An advertisement may not be sent to an addressee if prompted or precipitated by a specific event or occurrence involving or relating to the addressee as distinct from the general public.

Section 5. (1) A licensee may only advertise that the licensee is "board certified" if the certifying board advertised by the licensee is:

(a) A member of the American Board of Medical Specialties (ABMS);

(b) A member of the Bureau of Osteopathic Specialties and Board of Certification; or

(c) A board that has been determined, by a subcommittee of the Board of Medical Licensure comprised of members appointed by the president to require:

1. Identifiable training in the relevant specialty or subspecialty field within a program certified by the Accreditation Council for Graduate Medical Education or its equivalent; and

2. Satisfactory completion of a comprehensive psychometrically-validated examination in the specialty or subspecialty field.

(2) In making its determination, the subcommittee may rely on factual findings by the licensing authority of another state that the certifying board under consideration meets those requirements and/or is equivalent to member boards of the ABMS.

Section 6. Violation of any provision of this administrative regulation will be considered dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof pursuant to KRS 311.595(8) and 311.597(2).

DANNY M. CLARK, President

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005, at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2005 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 2005, 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 March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-8046, fax (502) 429-9923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment will define board certification as it relates to advertising.

(b) The necessity of this administrative regulation: Defines board certification as it relates to advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment meets statutory requirements in KRS 311.565 by defining board certification as it relates to advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment defines board certification as it relates to advertising.

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

(a) How the amendment will change this existing administrative regulation: This amendment defines board certification as it relates to advertising.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define board certification as it relates to advertising.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 311.565 by defining board certification as it relates to advertising.

(d) How the amendment will assist in the effective administration of the statutes: This amendment defines board certification as it relates to advertising.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,000 applicants each year and approximately 13,000 physicians and osteopaths currently licensed in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Licensees will be limited to board certification advertising as long as certain requirements are met.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None

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

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

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(Amendment)

201 KAR 19:035. Qualifications for examination and licensure.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(j) [(e)]

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the State Board Examination. A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take the examination.

Section 2. General Requirements. (1)(a) The board shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of his moral character.

(b) An applicant shall not be considered to be of good moral character if he has:

1. Committed an act specified in KRS 323.120(1)(a) through (j) [(e)];

2. Chronic alcoholism, persistent drug abuse, or an act of behavior that would, if the applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety; or

3. Violated a provision of KRS Chapter 323 or a board administrative regulation either before or after admission to the examination.

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board college transcripts and verification from employers and architects that he has:

(a) Met the requirements of KRS 323.050 and 323.060 and this administrative regulation; and

(b) Had well diversified and satisfactory training in architectural practice as evidenced by completion of the first year of the Intern Development Program specified in Section 4 of this administrative regulation.

(3) The documentation required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 3. Education Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall in addition:

(a) Hold a first professional degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board not later than two (2) years after termination of enrollment; or

(b) Have satisfied the education standard specified in the National Council of Architectural Registration Boards pamphlet "NCARB Education Standard", by earning five (5) years of equivalent education credits as determined by the experience and education definitions of Table A and its footnotes.

(2) The minimum five (5) years equivalent education credits shall be accumulated prior to June 1, 1992.

Section 4. Training Requirements for Licensure. (1) An applicant who has passed the examination shall have satisfied the Intern Development Program training requirements as provided by Chapter 1, Section 3 of the National Council of Architectural Registration Boards "Handbook for Interns and Architects" prior to final application for licensure.

(2) The documentation required by subsection (1) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

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

(a) "Handbook for Interns and Architects" 1996-1997 Edition, National Council of Architectural Registration Boards; and

(b) "NCARB Education Standard" 1996-1997 Edition, National Council of Architectural Registration Boards.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects [~~State board of Examiners and Registration of Architects~~], 301 East Main Street, Suite 860, Lexington, Kentucky 40507 [~~841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503~~], Monday through Friday, 9 a.m. to 5 p.m.

JILL SMITH, President

APPROVED BY AGENCY: September 14, 2004

FILED WITH LRC: February 9, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005, at 1 p.m., Eastern Time in the Board Conference Room, 301 East Main Street, Suite 860, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2005, 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 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Jill Smith, Board Chair, 301 East Main Street, Suite 860, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431.

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 educational, experience, and examination criteria for licensure as an architect.

(b) The necessity of this administrative regulation: KRS 323.210 requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.210 authorizes the board to establish by administrative regulation the criteria for education, experience, and examination for those persons seeking licensure as an architect.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of determining the qualification of applicants by identifying the criteria for eligibility to take the examination and for licensure.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation allows applicants to begin the examination process after one year of experience is completed.

(b) The necessity of the amendment to this administrative regulation: KRS 323.210 requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.050 authorizes the board to establish the experience necessary to take the examination.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration by identifying the criteria for initiating the examination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 30 persons to apply for licensure each year.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation specifies criteria for experience, experience, and examination for persons seeking to be licensed, thus ensuring that applicants know what is required by the board to obtain licensure.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this regulation will be funded by application fees paid by applicants.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in the fees is presently anticipated by reason of this amendment.

(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 applicants who seek licensure.

GENERAL GOVERNMENT CABINET
Board of Architects
(Amendment)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110

STATUTORY AUTHORITY: KRS 323.080, 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2) requires the board to promulgate administrative regulations establishing fees for services. This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.

Section 1. License Renewal. (1) The renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period. Except as provided in subsection (3) of this section, a licensee failing to pay the renewal fee on or before the 30th day of August, of that designated year, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his license shall be automatically revoked.

(2)(a) Except as provided by paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1.

(3) During a period of active military duty, an architect in the service may, upon written application to the board, be excused from paying the renewal fee until his military service is terminated and he wishes to resume practice. An identification card or renewal certificate shall be issued upon notification of his return from duty and payment of the current renewal fee.

(4) An architect whose license has been revoked for failure to pay the renewal fee, who wishes to have his license reinstated, shall make a written request giving the reason why he neither surrendered his registration nor paid the fee within the time prescribed by law. Upon payment of the prescribed fees and acceptance by the board, his license shall be reinstated.

(5) The application for license renewal shall include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19:095. Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. Fee Schedule. (1) Application for admission to the Architect Registration Examination - $100.

(2) Reapplication for admission to the Architect Registration Examination after original application has expired - $100.

(3) For a license certificate after passing of examination - twenty-five (25) dollars.

(4) Application for restoration of a voluntarily surrendered license - $150.

(5) Application for a license by reciprocity with another state or country - $200.

(6) Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - $150.

(7) Renewal fee: $125 [~~seventy-five (75) dollars~~] annually.

(8) A fee shall not be refunded. Each payment shall be by check made payable to "Kentucky State Treasurer." Each check shall be certified except those for the renewal fee.

Section 3. Charges for Examination. An applicant shall register with and pay the cost of taking the examination directly to the designated testing service. The charges shall be made each time the examinations are taken and shall not be refunded.

JILL SMITH, President

APPROVED BY AGENCY: February 10, 2005

FILED WITH LRC: February 11, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005, at 1 p.m., Eastern Time in the Board Conference Room, 301 East Main Street, Suite 860, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2005, 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 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Jill Smith; Board Chair, 301 East Main Street, Suite 860, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the fees required for licensure and renewal of licensure.

(b) The necessity of this administrative regulation: KRS Chapter 323 provides that a licensed architect shall pay fees that are established by administrative regulation within the statutorily created allowable limits. This administrative regulation establishes those fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.110 provides that applicants and licensees shall pay the prescribed fees, within the limits set out in the KRS 323.080, as determined by the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative sets out the fees to be paid for licensure and licensure renewal.

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

(a) How the amendment will change the existing administrative regulation: This amendment specifies the fee for the renewing a license.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 323.080(1) requires the board to set the fee for license renewal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.080(1) authorizes the board to set the renewal fees up to $150. The fee for renewal of set out in this amendment is within that limitation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation specifies the fee necessary to administer the operations of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 2,300 architects.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Licensees will be required to pay the renewal fee in order to renew their licenses.

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

(a) Initially: The costs associated with the implementation of this administrative regulation involve the employment of board administrator, the mailing costs for the renewal applications, and other costs.

(b) On a continuing basis: The costs are incurred yearly with

each renewal cycle.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The fees or funding necessary to implement this administrative regulation are included in this amendment.

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

(9) TIERING: Is tiering applied? No. This administrative regulation sets out a uniform renewal fee for the renewal of the architect license.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

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

RELATES TO: KRS 150.010, 150.180, 150.280, 150.290, 150.305

STATUTORY AUTHORITY: KRS, 150.025(1), 150.180(6), 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession [~~or holding~~] of exotic species with the potential to damage native ecosystems, and places restrictions on importing species that are potentially dangerous to human health and safety.

Section 1. Definition. "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including starling (Sturnus vulgaris), English or house sparrow (Passer domesticus), and Eurasian collared dove (Streptopelia decaocto).

Section 2. Prohibited Species. (1) Except as specified in subsection (3) [~~(2)~~] of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Baya weaver (Plocius phillipinus);
(b) Blackbirds (Genus Agelaius), except native species;
(c) Cape sparrow (Passer melanurus);
(d) Cowbirds (Genus Molothrus), except native species;
(e) Cuckoo (Family Cuculidae), except native species;
(f) Dioch or red-bellied quelea (Quelea quelea);
(g) European blackbird (Turdus merula);
(h) Fieldfare (Turdus pilar);
(i) Flying fox or fruit bat (Genus Pteropus);
(j) Gambian giant pouched rat (Cricetomys gambianus);
(k) Giant or marine toad (Bufo marinus);
(l) Hawaiian rice bird or spotted munia (Lonchura punctalata nisoria);
(m) Jack rabbit (Genus Lepus);
(n) Java sparrow (Padda oryzivora);
(o) Madagascar weaver (Foudia madagascariensis);
(p) Mistle thrush (Turdus viscivorus);
(q) Monk or Quaker parakeet (Myiopsitta monachus);
(r) Multimammate rat (Subgenus Mastomys);
(s) Mute swan (Cygnus olor);
(t) Nutria (Myocastor coypus);
(u) Prairie dog (Cynomys spp.);
(v) Raccoon dog (Nyctereutes procyonoides);
(w) San Juan rabbit (Orytolagus cuniculus);
(x) Sky lark (Alauda arvensis);
(y) Song thrush (Turdus philomelus);
(z) Starlings (Family Sturnidae) including pink starlings or rosy pastors (Sturnus roseus), except for Indian Hill mynahs (Graclua religiosa);
(aa) Suricate or slender-tailed meerkat (Genus Suricata);
(bb) Tongueless or African clawed frog (Aenopus laevis);
(cc) Weaver finches (Genus Passer), except Passer domesticus;
(dd) White eyes (Genus Zosterops);
(ee) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;
(ff) Yellowhammer (Emberiza citrinella);
(gg) A member of the following families:
1. Suidae (pigs or hogs), except for domestic swine;
2. Viverridae (civits, genets, lingsangs, mongooses and fossas);
3. Tayassuidae (peccaries and javelinas).

(2) Prohibited inherently-dangerous wildlife. Except as specified in subsections (3) and (5) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Adders or vipers (Family Viperidae) (except native species);
(b) Alligators or caimans (Family Alligatoridae);
(c) African buffalo (Syncerus caffer);
(d) Baboons, drills or mandrills (Genus Papio);
(e) Bears (Family Ursidae);
(f) Cheetah (Acinonyx jubatus);
(g) Clouded leopard (Neofelis nebulosa);
(h) Cobras or coral snakes (Family Elapidae);
(i) Crocodiles (Family Crocodylidae);
(j) Elephants (Family Elephantidae);
(k) Gavials (Family Gavialidae);
(l) Gelada baboon (Theropithecus gelada);
(m) Gila monsters or beaded lizards (Family Helodermatidae);
(n) Gorillas (Family Pongidae);
(o) Hippopotamus (Hippopotamus amphibius);
(p) Honey badger or ratel (Mellivora campensis);
(q) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus);
(r) Komodo dragon (Varanus komodoensis);
(s) Lions, jaguars, leopards or tigers (Genus Panthera);
(t) Old world badger (Meles meles);
(u) Primates (Order Primates);
(v) Rhinoceroses (Family Rhinocerotidae);
(w) Sea snakes (Family Hydrophidae);
(x) Snow leopard (Uncia uncia);
(y) Venomous rear-fanged species (Family Colubridae);
(z) Wolverine (Gulo gulo); or
(aa) Hybrids of all species contained in this list.

(3) Upon written request, the commissioner may authorize the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo or facility that is:
1. Accredited by [~~A member of~~] the American Zoo and Aquarium Association ("AZA"); or
2. Designated as the official zoo of a municipality.
(b) A government agency;
(c) A college or university; [~~or~~]
(d) A licensed or accredited [~~similar~~] educational or research institution; or [~~.~~]
(e) A lawfully operated circus or rodeo.

(4) A person may temporarily transport and display a prohibited animal listed in this section through the state for less than ninety-six (96) hours if at all times the animal is maintained within a confinement sufficient to prevent the animal from escaping.

(5) Possession of an inherently-dangerous animal prior to the effective date of the amendment to this administrative regulation.

(a) A person who legally possesses an inherently-dangerous animal as defined in subsection 2 of this section to the effective date of the amendment to this administrative regulation may possess the animal.

(b) The person shall maintain:
1. Veterinary records;
2. Acquisition papers for the animal; or

3. Any other documents that establishes that the person possessed the animal prior to the effective date of the amendment to this administrative regulation.

(c) A legally-possessed inherently-dangerous animal shall not be bred by a person who does not have an exemption as established in Section 2(3) of this administrative regulation.

(d) A legally-possessed inherently-dangerous animal shall not be replaced by a person who does not have an exemption as established in Section 2(3) of this administrative regulation.

(6) If any inherently-dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact the department to report the escape or release.

Section 3. Exotic Wildlife. Unless listed in Section 2(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:

(1) Be classified as protected wildlife; and

(2) Require a permit from the department for possession.

Section 4. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. Persons shall be responsible for applying for a transportation permit who:

(a) Receive a shipment of wildlife;

(b) Import wildlife for their own use or possession; or

(c) Transport wildlife into and through the state to a destination outside Kentucky;

(2) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.

(a) Individual transportation permits shall be valid for one (1) shipment of wildlife.

(b) Annual transportation permits shall be valid for multiple wildlife shipments for one (1) year from the date of issue. Annual transportation permit holders shall:

1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and

2. Notify the department by telephone Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of the date of expected shipment; source of the shipment; and the species being shipped.

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

[~~Section 5. Inherently Dangerous Animals. If not an institution listed in Section 2(2) of this administrative regulation, the transportation permit application shall be accompanied by a signed statement from the local authority having jurisdiction over where the animal will be kept, certifying that the possession of the following dangerous exotic species is not prohibited by local ordinance:~~

~~(1) Adders or vipers (Family Viperae);~~

~~(2) Alligators or caimans (Family Alligatoridae);~~

~~(3) African buffalo (Syncerus caffer);~~

~~(4) Baboons, drills or mandrills (Genus Papio);~~

~~(5) Cheetah (Acinonyx jubatus);~~

~~(6) Clouded leopard (Neofelis nebulosa);~~

~~(7) Cobras or coral snakes (Family Elapidae);~~

~~(8) Crocodiles (Family Crocodylidae);~~

~~(9) Elephants (Family Elephantidae);~~

~~(10) Gavials (Family Gavialidae);~~

~~(11) Gelada baboon (Theropithecus gelada);~~

~~(12) Gila monsters or bearded lizards (Family Helodermatidae);~~

~~(13) Gorillas (Family Pongidae);~~

~~(14) Hippopotamus (Hippopotamus amphibius);~~

~~(15) Honey badger or ratel (Mellivora campensis);~~

~~(16) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus);~~

~~(17) Komodo dragon (Varanus komodoensis);~~

~~(18) Lions, jaguars, leopards or tigers (Genus Panthera);~~

~~(19) Old world badger (Meles meles);~~

~~(20) Rhinoceroses (Family Rhinocerotidae);~~

~~(21) Sea snakes (Family Hydrophidae);~~

~~(22) Venomous rear-fanged species (Family Colubridae); or~~

~~(23) Wolverine (Gulo gulo).~~]

Section 5. [~~6.~~] The following animals shall not require permits from the department for importation:

(1) Alpaca (Lama pacos);

(2) American bison (Bison bison);

(3) Breeds and varieties of goats derived from the wild goat or bezoar (Capra aegagrus);

(4) Camels (Camelus bactrianus and Camelus dromedarius);

(5) Chinchillas (Chinchilla laniger);

(6) Cockatoos (family Cacatuidae);

(7) Domesticated races of ducks and geese (family Anatidae) distinguishable morphologically from wild ducks or geese;

(8) Domesticated races of the European rabbit (Oryctolagus cuniculus) distinguishable morphologically from wild rabbits;

(9) Domesticated races of mink (Mustela vison), if:

(a) Adults are heavier than 1.15 kilograms; or

(b) The fur color can be distinguished from wild mink;

(10) Domestic swine, except free-roaming or feral wild boars or wild swine;

(11) Domesticated races of rats (Rattus norvegicus or Rattus rattus) or mice (Mus musculus);

(12) Domesticated races of turkeys (Meleagris gallopavo) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;

(13) Domestic yak (Bos grunniens);

(14) Gerbils (Meriones unguiculatus);

(15) Guinea fowl (Mumida megeagris);

(16) Guinea pigs (Cavia porcellus);

(17) Hamsters (Mesocricetus spp.);

(18) Indian Hill mynahs (Graclua religiosa);

(19) Llama (Lama glama);

(20) Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (M. monachus), macaws (family Psittacidae);

(21) Peafowl (Pavo cristatus);

(22) Pigeons (Columba domestica or Columba livia) or domesticated races of pigeons;

(23) Ratites, as defined by KRS 247.870; and

(24) Toucans (family Rhamphastidae);

Section 6. [~~7.~~] Applying for Permits. (1) All applications for transportation permits shall be made on standard forms.

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

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

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

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

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

(a) Immediate withdrawal or revocation of the permit; and

(b) Confiscation of the wildlife imported under the permit.

Section 7. [~~8.~~] Endangered Species. A permit shall not be issued for the transportation or possession of federally endangered or threatened species without obtaining prior approval from the commissioner. The commissioner may grant approval for legitimate scientific or educational purposes for:

(1) A zoo that is:

(a) Accredited [~~A member of~~] the American Zoo and Aquarium Association; or

(b) Designated as the official zoo of a municipality;

(2) A government agency;

(3) A college or university; or

(4) A similar educational or research institution.

Section 8. [~~9.~~] Inspections. A person holding exotic wildlife

shall allow a conservation officer to inspect the holding facilities at any reasonable time.

Section 9. [~~10.~~] Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 10. [~~11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application, July 2003 edition"; and

(b) "Individual Transportation Permit Application, July 2003 edition."

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

C. THOMAS BENNETT, Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 3, 2004
FILED WITH LRC: February 1, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jim Lane, Program Coordinator, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the procedures for transporting and holding exotic wildlife in Kentucky.

(b) The necessity of the administrative regulation: To prohibit the importation and holding of exotic species that have the potential to damage native ecosystems.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing the transportation of wildlife. KRS 150.280(2) authorizes the department to identify species of wildlife potentially damaging to native ecosystems and prohibit the transportation and holding of those species.

(d) How will this administrative regulation assist in the effective administration of the statutes: This regulation establishes the list of inherently dangerous animals that are not native to Kentucky. The listed species are banned from transportation and possession in the state of Kentucky.

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

(a) How the amendment will change the existing administrative regulation: The amendment expands the list of species, which are prohibited from transportation into Kentucky and prohibited from possession in Kentucky. The amendment creates and clarifies exemptions for persons or entities which may possess the listed species and establishes exemptions where the animals may be transported through Kentucky (i.e. the listed species of prohibited animals may be transported and displayed if less than 96 hours and the animal is confined.)

(b) The necessity of the amendment to this administrative regulation: The KDFWR is receiving increasing numbers of complaints regarding possession and escape of the listed species.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: It is not determinable how many persons currently possess the species listed in Section 2(2) of this administrative regulation. Those persons who do possess the listed species may still possess them. However, those persons who wish to acquire and hold the species listed in Section 2(2) in the future may not do so. It is not determinable how many persons this prohibition will effect.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons already holding the species of animals listed in Section 2(2) will not be affected. Those persons may still possess their animals. However, these persons will not be permitted to acquire new animals listed on the prohibited species list after the effective date of the regulation unless they qualify for an exemption established in Section 2(3).

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

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

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees wildlife transportation and holding permits. Both divisions' current budgets will provide for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all persons who transport and possess exotic species.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390, 150.395, 150.990(11)

STATUTORY AUTHORITY: KRS 150.177, 150.390(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the procedures to obtain a depredation permit to control elk causing property damage. KRS 150.390(4) authorizes the department to establish elk hunting seasons and requirements. This administrative regulation establishes the hunting requirements during the elk hunting season and establishes procedures for applying for and participating in elk quota hunts and the requirements for issuing landowner cooperator permits.

Section 1. Definitions. (1) "Antlered elk" means an elk with one

(1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam. The main beam shall count as one (1) point.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Elk" means a member of the species Cervus Elaphus.

(4) "Limited entry area" means a strategically-located and defined management unit, large in size and consisting of public and private holdings, where elk populations are encouraged to grow and expand, serving as the source areas for elk within the restoration zone. These areas are managed for reduced hunting pressure and elk-hunting access is limited or restricted to specifically drawn and designated hunters. The limited entry areas are [~~either~~] the Begley/Redbird Limited Entry Area or the Starfire Limited Entry Area, each of whose boundaries are described in Section 4(4) of this administrative regulation.

(5) "Restoration area" means the Kentucky counties east of and including, Knox, Clay, Perry, Breathitt, Magoffin, Johnson, McCreary Martin, and Whitley.

(6) "Wild elk" means:

(a) An elk translocated and released by the department; or

(b) The progeny of an elk translocated and released by the department.

(7) "Zone-at-large" means any area within the sixteen (16) county restoration area except the limited entry areas.

Section 2. Elk Damage Control. (1) A person shall not kill or attempt to take or molest a wild elk that is causing property damage, except as specified in this administrative regulation.

(2) A person shall contact the department if he wants depredating wild elk removed from his property.

(3) Upon receipt of a damage complaint, the department shall:

(a) Verify that wild elk are causing the damage;

(b) Remove, destroy or authorize the destruction of the elk by the property owner or his designee; and

(c) The property owner or designee shall immediately contact the department upon destruction of the elk.

(4) A person authorized to destroy an elk under the provisions of this section shall not:

(a) Move the elk until he has attached a tag provided by the department to the carcass; and

(b) Remove the tag until the carcass is processed.

Section 3. Quota Elk Hunts. Application procedures and electronic drawing.

(1) A person may apply for a quota elk hunt permit December 1 - July 31.

(2) A person may apply by purchasing an elk hunt drawing permit by visiting the department's website at fw.ky.gov, calling BassPro at 1-877-598-2401 or visiting a KDSS agent and providing the following:

(a) The applicant's Social Security number or driver's license number; and

(b) A ten (10) dollar nonrefundable application fee.

(c) Elk hunt drawing permits may be purchased after July 31 to allow potential out-of-zone elk hunters to take out-of-zone elk in compliance with the permit requirements set forth in Section 7 of this administrative regulation. Purchases made after July 31 will not be eligible for or entered into the hunt drawing.

(3) An applicant may apply once. Duplicate applications shall result in disqualification.

(4) The commissioner may:

(a) Extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period; and

(b) Authorize the on-site sale of applications during promotional events or festivals.

(5) There shall be no preference points.

(6) There shall be a random electronic drawing.

(7) The drawing and complete results shall be posted on the department's website by August 20 of the application year.

(8) If any individual who was drawn is disqualified for any of the reasons specified in this administrative regulation, an alternate shall be redrawn from the undrawn applicants.

(9) A total of 102 [~~forty-one (41)~~] tags shall be awarded consisting of fifty-two (52) [~~twenty (20)~~] antlered and fifty (50) [~~twenty-one (21)~~] antlerless. Two (2) of the antlered tags shall be Special Commission Permits. Additional either-sex landowner cooperator permits will be issued with approval of the commission.

(10) A resident elk tag shall cost twenty-five (25) dollars.

(11) A nonresident elk tag shall cost $300.

Section 4. Drawn Applicants and Limited Entry Areas. (1) A person whose name is selected pursuant to this administrative regulation or a person who receives or is transferred a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3:100 shall participate in the elk quota hunt as assigned.

(2) An individual selected to participate in a quota hunt or who receives or is transferred a landowner cooperator permit or a special commission permit may be accompanied by up to two (2) other individuals who may assist in the retrieval of the harvested elk.

(3) Drawn applicants shall be assigned:

(a) The sex of the elk they are permitted to take; and

(b) The area they are permitted to hunt, either a limited entry area or zone-at-large [~~wide~~].

(4) The limited entry areas shall be designated as follows:

(a) Begley/Redbird Limited Entry Area: starting at the Thousandsticks exit on the Hal Rogers Parkway, the boundary proceeds east along Kentucky Route 118 to the junction of U.S. Route 221 at Hyden, Kentucky. The boundary then proceeds south along Highway 421 to the intersection of Highway 421 and Kentucky Route 66. The boundary then goes north following Route 66 to the intersection of Route 66 and Highway 421/Route 80. The boundary then proceeds east along the Hal Rogers Park to Thousandsticks exit completing the boundary.

(b) Starfire Limited Entry Area: begins at the intersection of Route 1098 and Route 80 near Softshell, Kentucky. The boundary proceeds west along Route 1098 to the junction of Route 1098 and Route 15. The boundary then proceeds south along Route 15 to the junction of Route 15 and Route 80 at the town of Hazard, Kentucky. The boundary proceeds east along Route 80 and intersects Route 1098 at Softshell, Kentucky completing the boundary.

[~~(5) Tags shall be distributed as follows:~~

~~(a) Two (2) antlered commission tags to be used at the Starfire Limited Entry Area;~~

~~(b) Six (6) antlered tags to be used at the Starfire Limited Entry Area;~~

~~(c) Six (6) antlerless tags to be used at the Starfire Limited Entry Area;~~

~~(d) Six (6) antlered tags to be used at the Begley/Redbird Limited Entry Area;~~

~~(e) Six (6) antlerless tags to be used at the Begley/Redbird Limited Entry Area;~~

~~(f) Six (6) antlered tags to be used in the elk zone outside of the limited entry areas; and~~

~~(g) Nine (9) antlerless tags to be used in the elk zone outside of the limited entry areas.~~]

Section 5. Seasons for Annual Quota Elk Hunts. (1) There shall be two (2) one (1) week [~~three (3)~~] annual elk quota hunts.

(a) There shall be a quota hunt beginning the first Saturday in October, for seven (7) consecutive days for antlered elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.

(b) There shall be a quota hunt beginning the first Saturday in December, for seven (7) consecutive days for antlerless elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.

(c) An either-sex archery season for zone-at-large permit holders shall be held from [~~The season for zone-wide quota elk permits shall be~~] the first Saturday in October through the third Monday in January.

(2) Legal weapons. All hunters may use any legal weapon for deer hunting except as provided by subsection (4) of this section.

[~~(a) Zone-wide hunters may use weapons legal for deer hunting, the day they are hunting, except as provided by subsection (5) of this section; and~~

~~(b) Limited entry area hunters may use any legal weapon for deer hunting except as provided by subsection (5) of this section.~~]

(3) Limits.

(a) A quota elk hunter shall only take one (1) elk of the sex determined by the tag drawn.

(b) An individual who receives or is transferred an either-sex landowner cooperator permit or a special commission permit may hunt in either the bull only or antlerless only quota hunts, providing the tag has not been filled but is held to the season bag limit.

(4) Illegal hunting equipment. A person shall not use or possess while elk hunting:

(a) A device capable of taking an elk except a firearm, crossbow or archery equipment;

(b) A modern firearm of less than .27 caliber;

(c) A muzzle-loading firearm of less than .50 caliber;

(d) A shotgun of less than 20 gauge;

(e) A handgun;

(f) Rimfire ammunition;

(g) A fully-automatic firearm;

(h) A firearm with a magazine capacity greater than ten (10) rounds;

(i) Steel jacketed ammunition;

(j) Tracer bullet ammunition;

(k) A shotgun shell containing more than one (1) projectile;

(l) A broadhead smaller than seven-eighths (7/8) inch wide;

(m) A barbed broadhead;

(n) A crossbow without a working safety device;

(o) A chemically-treated arrow; or

(p) An arrow with a chemical attachment;

(5) Hunter orange.

(a) During the firearm elk season, all hunters hunting within the sixteen (16) county elk restoration zone [~~elk quota hunts, elk hunters or any person accompanying an elk hunter~~] shall display solid, unbroken hunter orange visible from all sides on the head, back and chest pursuant to 301 KAR 2:172, Section 4, and 301 KAR 2:178, Section 3(7).

(b) The hunter orange portions of a garment worn to fulfill the requirements of this section:

1. May display a small section of another color; and

2. Shall not have mesh weave openings exceeding one-fourth (1/4) inch.

(c) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

(6) Hunter requirements.

(a) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the juvenile's firearm.

(b) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(c) An elk hunter or any person accompanying the elk hunter:

1. May be in the field, woods or stands before or after daylight hours, but shall not take elk except during daylight hours;

2. Shall not use dogs;

3. Shall not use bait;

4. Shall not drive elk from outside his assigned area;

5. Shall not take swimming elk;

6. Shall not use electronic calls; and

7. Shall not take an elk while in a vehicle or boat, or on horseback. A hunter may use a vehicle as a hunting platform if he has a disabled hunting exemption permit issued by the department.

(7) Tagging and check-in requirements.

(a) Immediately after taking an elk, a hunter shall attach the tag portion of the permit to the carcass before moving the carcass.

(b) Prior to hunting, the limited entry area hunters shall check in at the following locations:

1. Starfire Limited Entry Area- Robinson Forest;

2. Begley Limited Entry Area - Blanton Forest Boy Scout Camp.

(c) A person checking in for a limited entry area quota hunt shall show his Social Security number, and valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license.

(d) After harvest, limited entry area hunters shall check out at the locations listed in subparagraphs 1 and 2 of this paragraph.

(e) After harvest, zone-at-large [~~wide~~] hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log.[~~:~~

~~1. Shall notify the department by calling 1-800-25-ALERT to have the elk inspected; and~~

~~2. Shall not move the elk from the site until the department has completed the inspection.~~

~~3. May field dress an elk on site prior to inspection by the department, if the carcass and entrails are retained at the site until inspection is complete; and~~

~~4. Are not required to telecheck their harvest.~~]

Section 6. Elk Hunting on Public Land. (1) Individuals who have been drawn to hunt in the elk hunt, or who either receives or is transferred a special commission permit, may hunt on all Wildlife Management Areas, state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson Nation Forest within the sixteen (16) county elk zone under the conditions of the type of tag they receive.

(2) Public land that lies within a Limited Entry Area shall be managed under the requirements of Limited Entry Areas regulations.

(3) Public land that lies within the zone-at-large shall be managed under the requirements of the zone-at-large regulations.

(4) Portions of Paintsville Lake WMA lie outside the sixteen (16) county elk restoration zone and are subject to out-of-zone elk regulations.

(5) Elk hunting is not allowed on public areas during quota deer hunts.

(6) Hunter orange requirements shall be in effect.

Section 7. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per year to qualified landowners who enter into a five (5) year public hunting and access agreement with the department.

(2) To qualify, landowners shall own 5,000 acres of contiguous elk habitat to which he or she agrees to allow public hunting and access.

(3) Landowner cooperator permits are transferable, but shall be used on the landowner cooperator's land for which the agreement was made.

(4) One (1) landowner cooperator permit shall be issued for each 5,000-acres of contiguous land.

(5) Public access agreements with the department shall be memorialized in memorandums of understanding.

(6) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation regarding including seasons, legal methods of take and other elk hunting requirements.

(a) Landowner cooperator land that resides within a limited entry area shall be managed under the requirements of limited entry areas administrative regulation.

(b) Landowner cooperator land that resides within the zone-at-large shall be managed under the requirements of the zone-at-large administrative regulations.

Section 8. Hunting Elk Outside of the Sixteen (16) County Restoration Zone. (1)(a) A person may hunt elk in counties other than the sixteen (16) county restoration zone.

(b) The restoration zone counties are:

1. Bell;
2. Breathitt;
3. Clay;
4. Floyd;
5. Harlan;
6. Johnson;
7. Knott;
8. Knox;
9. Leslie;
10. Letcher;
11. Magoffin;

12. Martin;
13. McCreary;
14. Perry;
15. Pike; and
16. Whitley.

(2) The methods of taking and seasons established in 301 KAR 2:172 and 301 KAR 2:174 shall apply to taking elk outside of the sixteen (16) county restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter must be a legal deer hunter and have purchased a ten (10) dollar elk-drawing permit.

(b) Landowners are exempt from this permit requirement as per KRS 150.170.

(3) Either sex elk may be taken and shall not count towards the deer bag limit.

(4) There shall be a bag limit of one (1) out-of-zone elk per hunter [~~no bag limit for elk taken~~].

(5) Immediately after taking an elk, the hunter shall:

(a) Notify the department by calling 1-800-25-ALERT to have the elk inspected; and

(b) Not move the elk from the site until the department has completed the inspection.

(6) A hunter may field dress an elk on site prior to inspection by the department, if the carcass and entrails are retained at the site until inspection is complete.

(7) An elk harvested in a county other than the sixteen (16) county restoration area does not have to be telechecked.

(8) A person shall report the pickup of any elk antler that has the skull or skull plate attached to it, not including sheds. A person shall call the Department Law Enforcement at 1-800-ALERT within twenty-four (24) hours.

C. THOMAS BENNETT, Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: February 11, 2005
FILED WITH LRC: February 11, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dan Figert, Assistant Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dan Figert

(1) Provide a brief summary of:

(a) What the administrative regulation does: establishes the requirements for harvesting elk that have caused destruction; establishes the procedures for elk quota hunts and the application requirements; and establishes procedures for taking elk outside of the restoration area.

(b) The necessity of the administrative regulation: To assure the proper destruction of elk who are causing damage to property, to assure the fair selection of hunters who apply for the elk quota hunts, to establish procedures for eradication of elk outside the restoration area, and to protect and conserve elk in the commonwealth.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.390 authorizes the department to promulgate administrative regulations for the harvesting of elk that are causing destruction to property. KRS 150.390(4) authorizes the KDFWR to establish elk hunting seasons and requirements.

(d) How will this administrative regulation assist in the effective administration of the statutes: The elk population has reached a level that will support limited harvesting as the statute provides. Also, procedures are established for the destruction of elk should they cause damage to property. Finally, provisions are in place to allow the taking of elk outside of the restoration area. Without the procedures, harm may be caused to the elk population and the department's restoration and management efforts.

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

(a) How the amendment will change the existing administrative regulation: The amendment increases the number of quota elk tags that may be awarded from 41 to 100, allows elk hunting on public areas, and creates the "landowner cooperator permit". The landowner cooperator permit is a permit that may be issued to qualified landowners that agree to enter into a 5-year public hunting and access agreement with the department.

(b) The necessity of the amendment to this administrative regulation: Data from the 2004 elk season reveals that the Kentucky elk population can and should sustain greater elk hunting pressure. To sustain greater numbers of elk hunters, the elk hunters may need access to private and public lands. By establishing a landowner cooperator permit, a vehicle to provide public access to private land is created.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons wishing to apply for the annual quota elk hunt will be positively effected as chances for being drawn increase as the number of tags increased from 40 to 100. 8,500 persons applied for the 2004 quota elk hunt. Persons who own land over 5,000 acres who enter into an agreement with the department for public hunting access may receive one elk tag.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Elk quota hunt applicants will be affected positively as their chances for being selected grew with the increase in the number of elk tags from 40 to 100. Persons who own 5,000 or more acres will be effected positively as they may receive an elk tag if they agree to allow public hunting on their lands.

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

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

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The current budget of the Department of Fish and Wildlife Resources, Division of Wildlife overseas the elk program. There will be no additional costs associated with the quota hunt. The department already has the mechanisms in place for administering quota hunt application procedures and random drawings.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because all persons wishing to harvest elk or participate in the landowners cooperative permit program will be treated the same.

COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:140. Requirements for wild turkey hunting.

RELATES TO: KRS 150.010, 150.092, 150.170(3), 150.305, 150.360, 150.365, 150.390(1), 150.990(11)
STATUTORY AUTHORITY: KRS 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes procedures for hunting wild turkey to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state.

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.
(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

Section 2. A person shall not take a wild turkey:
(1) Except on the dates and during the times specified in:
(a) 301 KAR 2:142;
(b) 301 KAR 2:144; and
(c) 301 KAR 2:111; or
(2) By means other than those specified in this administrative regulation.

Section 3. Unless exempted by KRS 150.170(3), a person hunting a wild turkey shall possess a:
(1) Spring turkey hunting permit during the spring season;
(2) Fall turkey archery hunting permit during the fall archery season; or
(3) Fall turkey gun hunting permit if hunting with a firearm or crossbow during the fall gun season.

Section 4. (1) An adult shall accompany and maintain control of a person under sixteen (16) years of age turkey hunting with a firearm.
(2) Immediately after taking a wild turkey, a person shall:
(a) Record, in writing, the species, date taken, county where taken, and sex of the bird before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:
1. Hunter's log section on the reverse side of a license or permit;
2. Hunter's log produced in a hunting guide;
3. Hunter's log printed from the Internet;
4. Hunter's log available from any KDSS agent; or
5. An index card or reasonable facsimile thereof; and
(b) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.
(3) A person shall check a harvested turkey by:
(a) Calling 1-877-245-4263 the day the turkey is harvested;
(b) Providing the information requested by the automated check-in system; and
(c) Writing the authorization number given by the system on the hunter's log described in Section 4 of this administrative regulation.
(4) A person shall:
(a) Not knowingly provide false information when checking a turkey; or
(b) Check a turkey before transporting it out of Kentucky.
(5) A person taking a turkey on a Wildlife Management Area shall follow the tagging and checking requirements in 301 KAR 2:142 and 301 KAR 2:111.
(6) If a harvested turkey leaves the possession of a hunter, the hunter shall attach a hand-made tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.

Section 5. Firearms and Archery Equipment. (1) A person hunting wild turkey shall not use or carry:
(a) A rifle or handgun;
(b) A shotgun larger than ten (10) gauge or smaller than twenty (20) gauge;
(c) Shot larger than number four (4);
(d) Shotgun slugs;
(e) A firearm during archery-only seasons;
(f) Barbed broadheads;
(g) Broadheads smaller than seven-eighths (7/8) inch wide;
(h) Arrows with chemical treatments or attachments containing chemicals; or
(i) Crossbow without a working safety device.
(2) A person hunting wild turkeys may use a crossbow during firearm season.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:
(a) While bait is present; or
(b) For thirty (30) days after the bait has been removed.
(2) A person may hunt wild turkey on an area where grain, feed or other substance exists as the result of:
(a) Bona fide agricultural practice; or
(b) Manipulating a crop for a wildlife management purpose.
(3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field.

Section 7. Turkey Hunting Restrictions. (1) A person hunting wild turkeys:
(a) May use a hand or mouth-operated call; and
(b) Shall not:
1. Use a dog during spring season;
2. Hunt from a boat;
3. Use or possess an electronic or digital calling device [~~call~~];
4. Use a live decoy;
5. Take a roosting turkey; or
6. Hunt with a crossbow without a working safety device.
(2) A person shall not mimic the sound of a turkey from March 1 until the opening of the spring season in an area open to hunting if turkeys are reasonably expected to occur.

C. THOMAS BENNETT, Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: January 31, 2005
FILED WITH LRC: February 1, 2005 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Jim Lane, Program Coordinator, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of: This administrative regulation establishes hunting procedures and requirements for taking wild turkey. The measures assure the continued protection and conservation of the wild turkey population in Kentucky.

(a) What the administrative regulation does: Establishes the requirements for hunting wild turkey in Kentucky, including: the season dates, recording a harvested turkey, checking a harvested turkey, hunting turkey on WMAs, and firearm and archery equipment used to take turkey.

(b) The necessity of the administrative regulation: To continue the protection and conservation of the wild turkey population in Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing hunting, including wild turkey hunting.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations for hunting wildlife. This administrative regulation establishes the specific procedures for hunting wild turkey. This administrative regulation supplements the statute by providing the specific seasons, limiting devices used for taking wild turkey, and establishing where taking wild turkey is permitted.

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

(a) How the amendment will change the existing administrative regulation: The amendment bans the possession of electronic and digital calling devices.

(b) The necessity of the amendment to this administrative regulation: Prior to this amendment, the use of electronic calling devices was prohibited. To assist with enforcement, clarification was necessary to not only ban use, but also possession in the field while hunting.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Turkey hunters in the commonwealth will be affected. There are approximately 80,000 turkey hunters in Kentucky.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The turkey hunters of the commonwealth will be affected minimally. The use of electronic devices has always been banned. Now, the provision is clarified to include possession.

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

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

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources, Division of Law Enforcement already oversees the enforcement of administrative regulations.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: IS tiering applied? Tiering was not used because there is only one class of turkey hunters. All wild turkey hunters in Kentucky shall comply with the same procedures.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

RELATES TO: KRS 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99 152

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [~~which~~] elect to house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(3) "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(4) "Department" is defined in KRS 441.005(5).

(5) "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(6) "Direct Supervision" means an area used to house inmates in whom a corrections officer is always present and directly supervising the inmates. Inmates housed in direct supervision areas shall be classified objectively based on their risk and needs and their classification indicates their ability to function in this type setting.

(7) [~~(6)~~] "Dormitory" means an area equipped for housing not less than three (3) or more than thirty-six (36) persons. Jails using direct supervision dorms shall not house more than seventy (70) persons.

(8) [~~(7)~~] "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(9) [~~(8)~~] "Jail" is defined in KRS 441.005(1).

(10) [~~(9)~~] "Jail personnel" is defined in KRS 441.005(6).

(11) [~~(10)~~] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.

(12) [~~(11)~~] "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners [~~inmates~~] in the jail's custody [~~jail~~].

(13) [~~(12)~~] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(14) [~~(13)~~] "Penal type" means furnishings, fixtures, and equipment approved by the department.

(15) [~~(14)~~] "Prisoner" is defined in KRS 441.005(3).

(16) [~~(15)~~] "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(17) [~~(16)~~] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(18) [~~(17)~~] "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(19) [~~(18)~~] "Sally port" means a vehicular drive-in, which shall be located in close proximity to the jail intake area.

(20) [~~(19)~~] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(21) "Security personnel" means full-time and part-time personnel operating within a security area.

(22) [~~(20)~~] "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, as well as other body cavities.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes definitions for 501 KAR Chapter 3 concerning full-service jail facilities.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment adds and revises definitions for 501 KAR Chapter 3.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.
(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.
(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: None
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.
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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.
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 (+/-): None
Expenditures (+/-): None
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:020. Administration; management.

RELATES TO: KRS 69.210, 202A.091, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures to be followed by jails which elect to house state prisoners for the administration and management of those jails.

Section 1. Policy and Procedure - Organization. (1) The jailer for a jail which elects to house state prisoners shall develop and maintain an organizational chart and an operations manual of policy and procedure that [~~which~~] has been adopted by the fiscal court and filed with the Department of Corrections.
(2) The written policy and procedures manual shall be made available to employees.
(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:
(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and management.
(f) Medical services.

(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Prisoner programs.
(k) Prisoner services.
(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Legal Assistance. (1) The jailer for a jail which elects to house state prisoners shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing if legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer if the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

Section 3. Public Information. (1) The jailer for a jail that [~~which~~] elects to house state prisoners shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and prisoner shall have access to the procedures.

(2) With the consent of the prisoner, news media shall be permitted to interview any prisoner as set forth in the jail's policy and procedure manual except if the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for prisoner interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of prisoner information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function [~~and with the consent of the prisoner~~]; and

(c) Private citizens shall only be provided with information supplied to the media.

(6) Information shall not be released that is detrimental to another prisoner.

Section 4. Information Systems. The jailer for a jail that [~~which~~] elects to house state prisoners shall establish and maintain an information system that [~~which~~] shall comply with the requirements of this section.

(1) Jail information and prisoner records shall be retained in written form or within computer records.

(2) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a prisoner record shall be maintained after a prisoner's release from custody and the conditions by [~~under~~] which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include but not be limited to:

(4) A telephonic report to the Department of Corrections shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include, but are not be limited to:

(a) Death of a prisoner.
(b) Attempted suicide that constitutes a serious health situation or suicide.
(c) Serious injury, whether accidental or self-inflicted.
(d) Attempted escape or escape from confinement.
(e) Fire.
(f) Riot.
(g) Battery, whether by a staff member or prisoner.
(h) Sexual assaults.
(i) Occurrence of contagious or infectious disease, or illness within the facility.
(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or prisoners known to be or suspected to be mentally ill or mentally retarded.
(k) Any serious event that threatens the safety or security of the facility or staff.

(4) All jails electing to house state prisoners shall keep a log of daily activity within the jail.

(5) Each jail electing to house state prisoners shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

(6) Each jail electing to house state prisoners shall be required to provide the Department of Corrections with a weekly population update that shall include the number of state prisoners, federal prisoners and county prisoners.

Section 5. Prisoner Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each prisoner. Other information retained in each prisoner's jail record shall include but not be limited to:

(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Work record and program involvement.
(f) Unusual occurrences and if death of a prisoner, disposition of the prisoner's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer for a jail which elects to house state prisoners shall ensure that prisoner records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that prisoners sign a "Release of Information Consent Form" prior to the release of information, other than public information, to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the prisoner's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of prisoner.
(g) Signature of employee witnessing the prisoner's signature.

(5) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer for a jail which elects to house state prisoners shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals inter-

ested 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a)What this administrative regulation does: This administrative regulation establishes procedures for the administration and management to be followed by jails that elect to house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a telephone reporting requirement for extraordinary or unusual occurrences to comply with commission recommendations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: Staff at the jail will need to make telephonic reports when the jail has an extraordinary or unusual occurrence.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: County government funds

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON 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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:030. Fiscal management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth fiscal [~~physical~~] management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.

(2) The jailer shall use the format for budget development on forms prepared by the Governors Office for Local Development [~~State and Local Finance Office~~].

(3) The Governors Office for Local Development [~~State and Local Finance Office~~] shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide inmates with approved items. The records of income, expense, and disbursements of the canteen shall be audited annually. The cost of this audit may be paid by the county's general fund, the jail's general fund, or the jail's canteen fund.

Section 4. Audits. The county jail budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth fiscal management procedures to be followed in full-service jail facilities.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.
(2) If 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 requires that jail prisoner canteens have an annual audit performed and changes the name of a government office to reflect its new name.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.
(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.
(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 jail will have to have its prisoner canteen accounts audited on a yearly basis.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Cost of an audit of the canteen account.
(b) On a continuing basis: Annual cost of an audit of the canteen account.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Canteen Account, Jail Budget, County Budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.
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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.
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 (+/-): None
Expenditures (+/-): Direct cost of an audit of the canteen account.
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.045, 441.055, 441.115
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes personnel procedures to be followed in full-service jails.

Section 1. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.
(2) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. Security employees shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage [~~salary~~] at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law applies.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.115, the jailer shall successfully complete a minimum of forty (40) hours annual in-service training certified by the department.

(a) Local corrections training efforts shall be certified by the department.

(b) The Curriculum Advisory Committee shall advise the department on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the department.

(2) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or local basis or approved by the department if delivered by another agency.

(3) Jail staff who are assigned to a direct supervision area shall receive forty (40) hours of preservice training related to direct supervision. Such training shall be approved by the Department of Corrections.

Section 5. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every staff position.

Section 6. Physical Fitness. The jailer shall ensure a level of physical fitness is maintained that will allow each employee to satisfactorily perform their duties.

Section 7. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or favor with a prisoner, prisoner's [~~his~~] family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against a prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9. Bring a weapon or an item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of staff or a prisoner in the presence of another prisoner;

11. Divulge confidential information without proper authorization;

12. Withhold information which threatens the security of the jail, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or another;

14. Engage in a business or profitable enterprise with a prisoner; or

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties.

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from a superior;

2. Treat each prisoner in a fair, impartial manner; and

3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commssioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon

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CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 requires a minimum of 2 staff on duty at all times and sets training requirements for staff on direct supervision dorms.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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:?

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

(a) Initially: The direct cost of hiring any additional staff necessary to provide 2 staff on duty at all times in the jail.

(b) On a continuing basis: The yearly cost of any additional staff hired

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: County 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

5. 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 (+/-): None

Expenditures (+/-): The direct cost of providing staff for 24 hour awake staffing for the jail.

Other Explanation: The direct cost of adding additional staffing to provide 24 hour awake staffing for the jail will cost less than $20,000, plus any benefits, per additional staff member.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:050. Physical plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design and construction of jails.

Section 1. Consultation. The department shall provide to a county government seeking to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the jail;

(7) Probable cost for operation of the jail; and

(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A jail shall not be built without site acceptance by the department. The following criteria shall be considered in site selection:

(1) Size;

(2) Proximity to court;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the department for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction or information review purposes, a programming phase, to include:

(a) Evaluation of existing facility;

(b) Population analysis as based on the NIC staffing analysis, and may include, jail's operations, jail programs, court location, and transportation issues;

(c) Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation costs;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations.

(2) A schematic phase containing:

(a) A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

(b) A scale drawing of the site, locating the building, parking and other facilities one (1) inch equals fifty (50) feet;

(c) Documentation of site as to:

1. Size;
2. Proximity to court;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) Sections through the proposed structure indicating deck [~~ceiling~~] heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawing of exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design development phase containing:

(a) A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) Construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include changes required by the department; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of the contracts for construction, financing and bonding;

(b) Signed copies of the construction permits; and

(c) Documentation of required review by other applicable state agencies.

(6) Every change order shall be submitted to the department for review and approval.

Section 4. Approval of Renovation, Construction Plans and Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department shall:

(a) Review each submission within thirty (30) days of receipt; and

(b) Issue a letter of:

1. Approval;

2. Acceptance with required changes; or

3. Rejection, with reasons stated.

(2) Depending on the site of the proposed constructions, renovation or addition, the department may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, for review and approval.

(3) A change to the plan shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 5. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:

(a) That strict compliance shall cause unreasonable difficulties;

(b) That a waiver shall not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance shall be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 6. Facility Design. Depending upon its size and intended use, each jail shall include within its walls the following facilities and equipment:

(1) Entrances. Each jail shall have three (3) separate and distinct entrances: a public entrance, a prisoner entrance and a service entrance. The department may permit these entrances to be combined.

(a) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming prisoners. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

1. Provide a clear view of this from the control room by means of direct surveillance or closed circuit TV.

2. Meet the requirements for handicapped persons.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.

(c) Prisoner entrance. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners. The entrance shall be serviced by a drive-in sally port made secure by electronically or manually operated doors for entrance and exit, or a secure walk-in vestibule and shall incorporate the following design features:

1. Be located adjacent to the booking area.

2. Be monitored from the control room.

3. Be free of steps or other obstacles.

4. Be protected from inclement weather.

5. Have a security penal-type pistol locker in the sally port or vestibule.

6. Hardware and equipment shall be of approved penal-type.

(d) When the vestibule is used for outside entrance, at least the outer entry door shall be remotely operated.

(2) Exits. An opening in the security perimeter shall be secured with a penal device. Fire exits, when possible, shall open into controlled, secured courts or [~~and~~] exercise areas.

(3) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:

(a) A waiting area which shall provide:

1. Space for the general public;

2. Protection from inclement weather; and

3. If the facility is a new jail, toilet facilities and drinking fountains;

(b) A visiting area, public side which shall:

1. Provide for private communication with prisoners; and

2. Be located in close proximity to the waiting area;

(c) An office area which shall be of sufficient space to house the administrative function of the jail; and

(d) An entrance to the security area which shall:

1. Provide secure access to the security area;

2. Be of penal-type; and

3. Have access controlled from the security area.

(4) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain a booking area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release procedures. The equipment shall be penal-type. This area shall be designed for different classes of prisoners. Design features for this area shall include:

(a) Close proximity to a secure area for storage of prisoner personal property.

(b) Close proximity to an area for photography and fingerprinting.

(c) Close proximity to an area for showering, delousing, and strip searching a prisoner which assures privacy for the prisoner.

(d) Close proximity to temporary holding and detoxification cells.

(e) Located in a manner to be monitored by a control room.

(5) Detoxification area. The purpose shall be to provide an area to separate intoxicated prisoners from the general prisoner population. Design features shall include:

(a) A minimum of fifty (50) square feet per prisoner.

(b) A minimum of eight (8) feet deck [~~ceiling~~] height.

(c) One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner.

(d) A penal commode, lavatory and a flush floor drain controlled from outside the cell.

(e) A bubble-type drinking fountain.

(f) These fixtures and equipment shall be penal-type.

(g) Each surface inside the area shall be smooth, flush, and free of sharp edges and protrusions.

(h) Each horizontal surface (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain.

(i) The protruding corners (except at deck [~~ceiling~~]) shall be covered.

(j) Deck [~~Ceiling~~], walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction.

(k) Each detox cell shall have sufficient penal-type fixtures capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.

(6) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion holding.

(a) Design features for secure holding shall include:

1. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.

2. Eight (8) feet deck [~~ceiling~~] height.

3. One (1) penal-type bench per rated capacity.

4. The equipment shall be penal-type.
5. One (1) penal-type lavatory and commode.
6. One (1) penal-type light fixture capable of providing twenty (20) foot-candles of light.
7. Decks [~~Ceilings~~], walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.

(b) If a diversion holding area is provided, features and requirements shall include:
1. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;
2. Total rated capacity not to exceed twenty-four (24) persons;
3. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;
4. At least one (1) water fountain shall be located in the area;
5. A phone system shall be available for use by prisoners;
6. Construction shall be fire-rated with penal hardware, windows and door;
7. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire-rated;
8. An unobstructed view into the area shall be provided;
9. Areas shall have constant in-person surveillance;
10. If prisoners are housed in the area during normal meal times, they shall be fed. Meals shall be either hot or cold; and
11. Policy and procedure shall set forth criteria for placement of prisoners in this area.

(7) Medical exam room. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:
(a) Minimum dimension shall be eight (8) feet.
(b) Minimum deck [~~ceiling~~] height shall be eight (8) feet.
(c) One (1) lavatory or counter sink.
(d) One (1) work counter.
(e) Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.
(f) One (1) or more medical examination tables.
(g) Electrical power outlets shall be provided in this room.
(h) All decks [~~ceilings~~], walls, and floors shall be approved masonry, concrete or steel construction.
(i) If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment.

(8) Visiting area, prisoner side. The purpose shall be to provide secure and private visitation for the prisoners. The equipment and furnishings shall be of penal-type and permanently attached.

(9) Conference area. The purpose of this area shall be to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. Design features shall include:
(a) Doors, windows, and light fixtures shall be penal-type.
(b) Walls, floors, and decks [~~ceilings~~] shall be of approved masonry, concrete or steel construction.
(c) Furnishings shall be noncombustible and nontoxic as approved by the department.

(10) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activities. This area shall allow at least twenty-five (25) square feet per prisoner in an area with a minimum of 250 square feet. Design features shall include:
(a) Doors, windows, and light fixtures shall be penal-type.
(b) Walls, floor, and deck shall be of approved masonry, concrete or steel construction.
(c) Furnishings shall be noncombustible and nontoxic as approved by the department.
(d) Deck [~~Ceiling~~] shall be of approved construction [~~constructions~~].

(11) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per prisoner in an area with a minimum of 385 square feet.

(12) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:
(a) Compliance with standards for the Retail Food Code, 902 KAR 45:005.
(b) Commercial-type stoves and refrigeration units.
(c) Doors and windows shall be penal-type.
(d) Walls, floors, and decks [~~ceilings~~] shall be approved fire-rated masonry, concrete or steel construction.

(13) Control room. The purpose of this area shall be to control all movement of prisoners within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:
(a) Doors and windows shall be of penal-type.
(b) Walls, floors, and deck [~~ceiling~~] shall be approved masonry, concrete or steel construction.
(c) Audio and video monitors shall be located in this area.
(d) Gauges, indicators, and alarms shall be located in this area.
(e) Central control panels shall be located in this area.
(f) This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(14) When jail staff is [~~are~~] not within normal hearing distance of prisoners, an audio communication system shall be installed to allow staff to communicate with prisoners.

(15) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(16) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of prisoners lodged in the jail.
(a) Design features for all living areas shall include:
1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.
2. Providing ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:105.
3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit).
4. Shall be of approved masonry, concrete or steel construction.
5. All furnishings and equipment shall be penal-type and permanently attached.
6. Each confinement area shall have floor drains to service each living area.
7. Be equipped with an approved securable food pass.
8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal-type.

(b) All cells and housing areas design features shall include:
1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the prisoners housed in the area. Depending on the size of the jail, at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.
2. Depending on the size of the jail, one (1) or more isolation single-man cells shall be provided.
3. All cells shall open into a dayroom and a cell shall not be less than seventy (70) square feet. A cell shall not have more than two (2) penal-type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours, except in emergency situations.
4. When the vestibule is used at a cell area, at least the inner door shall be remotely operated. Each cell shall contain:
a. A penal-type commode, lavatory and drinking fountain, penal-type bunks secured to the floor or wall, penal-type table with two (2) seats, and penal-type storage area for personal property.
b. A penal-type light fixture with controls nonaccessible to prisoners unless it has staff override.
5. The jail shall provide living space for low security prisoners including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they shall include:
a. Forty (40) [~~Fifty (50)~~] feet per prisoner.
b. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) [~~eight (8)~~] prisoners. One (1) urinal may be

substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.

c. One (1) shower per twenty (20) [~~sixteen (16)~~] prisoners.

d. Sufficient tables and benches to handle the number of prisoners housed in the dorm.

e. One (1) penal-type storage area for personal property per prisoner.

f. One (1) penal-type bunk [~~secured to the floor or wall~~] per prisoner.

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per prisoner.

b. One (1) commode per eight (8) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.

c. One (1) lavatory per eight (8) prisoners.

d. One (1) drinking fountain per twenty (20) [~~sixteen (16)~~] prisoners.

e. One (1) shower per twenty (20) [~~sixteen (16)~~] prisoners.

f. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per prisoner.

(17) Direct supervision areas. The purpose of a direct supervision area shall be to provide suitable living conditions for prisoners who are located in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail staff. Jails that elect to use the direct supervision concept shall have a sufficient number of secure cell or dormitories, as approved by the Department of Corrections, in order to separate prisoners who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter. Direct supervision area design features shall include:

(a) Sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

(b) Ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:105.

(c) Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit.

(d) Approved masonry or concrete construction shall be used.

(e) All furnishings and equipment shall be penal-type or commercial type.

(f) Electrical outlets shall be ground-faulted or have ground-fault circuit breakers.

(g) Dormitories shall not be less than forty (40) square feet person or exceed more than seventy (70) persons.

(h) One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners. One (1) urinal may be substituted for each commode in male areas. The commodes shall not be reduced to less than one-half (1/2) the number required.

(i) One (1) shower per twenty (20) prisoners.

(j) Sufficient tables and chairs to handle the number of prisoners in the dorm.

(k) One (1) storage area for personal property per prisoner.

(l) A phone system shall be available for use by prisoners.

(m) All other full-service requirements as outlined in the Kentucky Administrative Regulations (KAR) for jails shall apply to direct supervision areas.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005, at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards and procedures for construction and design of full-service jail facilities regulated by 501 KAR Chapter 3.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds and revises definitions to comply with commission recommendations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

Contact Person: Kelly White

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 will affect. County jails that house state prisoners.

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. The regulation relates to county jails that house state prisoners by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): Income from housing additional prisoners.

Expenditures (+/-): Cost of housing additional prisoners.

Other Explanation: The change in square footage requirements will provide additional bed space. This change will allow the jails to house additional prisoners with the attendant costs of the larger number of prisoners.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes security procedures to be followed in full-service jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the jail's operation.

(2) The department shall provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules and administrative regulations;

(b) Staffing;

(c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;

(g) Surveillance checks;

(h) Emergency situations;

(i) Jail schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner on an irregular schedule, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of prisoners:

(a) Suicidal;

(b) Assaultive, unless housed in a single cell;

(c) Escape risk, unless housed in a single cell;

(d) Mentally or emotionally disturbed;

(e) In segregation, unless housed in a single cell;

(f) In detox cell;

(g) Juveniles, if housed in the jail; and

(h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sally ports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to a prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The prisoner rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities.

(2) A weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. Firearms shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer, it shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail personnel.

(7) A prisoner:

(a) May be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of staff; and

(b) Shall not be assigned to a position of authority over another prisoner.

(8) A prisoner shall not be permitted to perform or assist in a security duty.

(9) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.

(10) A prisoner shall be searched, in accordance with the guidelines established in 501 KAR 3:120, whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner placed in physical restraints shall be constantly monitored.

(14) The jail shall have key-control procedures which shall include:

(a) A key control center which is secure and inaccessible to an unauthorized person at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing a broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) A prisoner shall not be permitted to handle a key used to operate a jail security lock.

(f) A key operating a lock to an outside door or gate shall not be permitted in the confinement area.

(g) An emergency key or any key to a critical security area

shall be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of nonkey operated locking devices including electrical switches or levers.

(i) A lock to an outside exit shall be keyed differently from an interior lock. The lock to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) A trustee shall not have access to, or control of, a weapon.

(b) An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.

(c) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(1) Use of force.
(2) Disciplinary action.
(3) Medical or mental health treatment.
(4) Feeding schedule and menus.
(5) Extraordinary occurrences.
(a) Fire.
(b) Assault.
(c) Suicide or attempted suicide.
(d) Escape or attempted escape.
(6) Inmate vandalism.
(a) Destruction of jail property.
(b) Flooding of plumbing fixtures.
(7) Staff roster for each shift.
(8) ~~[Telephone log of initial phone call.~~
~~(9)~~] Visitor's log.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes security procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes regulation required by the authorizing statute concerning jails.

(2) If 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 deletes a logging requirement.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None
Expenditures (+/-): None
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that ~~[which]~~ elect to house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners, visitors, and staff. The policy shall include:

(a) Provision for a fire emergency planning session for staff at least quarterly.

(b) Written documentation of the fire planning session.

(c) A fire safety inspection by the department at least once a year.

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and regulations.

(f) An evacuation plan coordinated with local fire officials. This plan shall be approved by the Department of Corrections.

(2) Each jail shall have written policy and procedures for emergency situations including:

(a) Escape;
(b) Hostage taking;
(c) Riot;
(d) Food poisoning;
(e) Civil disturbance in the community;
(f) Natural disaster;
(g) Suicide; and
(h) Other death and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:105. An existing jail for which approval has been granted may continue without change, except when a significant alteration ~~[an alternation]~~, addition or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;
(b) Visible at all times;
(c) Kept clear; and
(d) Maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

(6) Each direct supervision area shall have an approved fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes emergency plan approval requirements.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None
(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Con-

stitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan that [~~which~~] includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail.

(b) A schedule for inspections by the jailer.

(c) A schedule for trash and garbage removal.

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh [~~and purified~~] air circulating within inmate living and activity areas.

(5) The jail shall furnish clean sanitized bedding to inmates except in holding areas and unless it is determined to be detrimental to a particular inmate. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress.

(b) [~~One (1) mattress cover.~~

~~(c)~~] One (1) blanket, when conditions require.

(c) Two (2) sheets [~~(d) One (1) sheet~~].

(d) [~~(e)~~] One (1) pillow.

(e) [~~(f)~~] One (1) pillowcase, if applicable.

(6) Inmate bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each inmate shall be issued a clean towel upon admission to an inmate living areas. Towels shall be laundered weekly or more as needed [~~every fourth day~~].

(8) All floors, toilets, and sinks in the jail shall be washed daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) All inmates assigned to inmate living areas shall be issued or permitted to obtain the following hygienic items:

(a) Soap.

(b) Toothbrush.

(c) Toothpaste.

(d) Toilet paper.

(e) Female sanitary supplies (where applicable).

Indigent inmates shall be furnished these items by the jail.

(11) All inmates shall be permitted to shave a minimum of three (3) times per week. No communal razors shall be used [~~shave daily. If a communal razor is used, it shall be sanitized before each use~~].

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all inmates.

(13) All inmates shall be provided shower facilities within twenty-four (24) hours of admission. Inmates shall be permitted to shower daily.

(14) All inmates in the jail shall be provided with hot and cold running water in showers and lavatories.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures to provide proper sanitation and hygiene in jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the number of sheets to be issued to a prisoner and prohibits communal razors.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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 jail will have to purchase additional sheets, but will no longer be required to have mattress covers.

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

(a) Initially: The cost of additional sheets

(b) On a continuing basis: The cost of replacing the sheets are they wear out.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: County jail 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): The cost of additional sheets.

Other Explanation: The cost of additional sheet will be offset by the deletion of the cost of a mattress cover.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails which elect to house state prisoners and for jails which do not elect to hold state prisoners. This administrative regulation sets forth procedures for the proper delivery of medical services in both types of jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in Kentucky.

(2) The medical staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(3) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(5) Prisoners shall not perform any medical functions within the jail.

(6) Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(7) All medical procedures shall be performed according to [~~written and standing~~] orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care provider.

(8) Medical screening shall be performed by the receiving officer on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behavioral observation, state of consciousness and mental status.

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(9) Sick call conducted by the medical authority shall be available to each prisoner as follows:

(a) Facilities with fewer than 100 prisoners shall hold sick call one (1) day per week, at a minimum.

(b) Facilities with 100 to 300 prisoners shall hold sick call three (3) days per week, at a minimum.

(c) Facilities with more than 300 prisoners shall hold sick call four (4) days per week, at a minimum.

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.

(11) At least one (1) jail staff member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation).

(12) Emergency medical and dental care shall be available to

all prisoners commensurate with the level of care available to the community.

(13) Medical research shall not be permitted on any prisoner in the jail.

(14) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record shall be separate from custody and other administrative records of the jail.

(15) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for prisoner care. [~~For minors, the informed consent of the parent, guardian, or legal custodian shall apply if required by law.~~]

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all prisoners who die while in the custody of the jailer.

(17) The jailer shall have written delousing procedures.

(18) All jail staff or contract staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that [~~which~~] can provide the treatment or may be moved to a hospital.

(21) When emergency care is needed, it shall be provided.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures for the proper delivery of medical services in jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes emergency medical mandatory.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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.

4. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

5. 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:100. Food services.

RELATES TO: KRS 217.280-217.390, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055

requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails which elect to house state prisoners and for jails which do not elect to hold state prisoners. This administrative regulation sets forth procedures for proper food services in both types of jails.

Section 1. Procedures. (1) The jail shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile prisoners shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets if prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) A staff member shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of a staff member.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) [~~Food shall not be prepared in inmate living areas, except~~] Canteen food items purchased by prisoners may be stored or prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures for proper food services in jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a provision concerning safety for the storage and preparation of food purchased from the prisoner canteen.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:110. Classification.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

Section 1. Procedure. (1) Each jail shall develop a prisoner classification system, which shall be included in the facility's written policy and procedure manual.

(2) The prisoner classification system shall provide for separation of the following categories of prisoners:

(a) Male and female prisoners, except in diversion/holding;

[~~(b) Juvenile and adult prisoners. If a juvenile is housed in the jail, he shall be housed as a juvenile regardless of his criminal status, severity of offense charged, or waiver of rights;~~]

(b) [~~(c)~~] Mental inquest detainee and other prisoners;

(c) [~~(d)~~] Mentally ill or mentally retarded prisoner and other prisoners;

(d) [~~(e)~~] Chemically incapacitated prisoner and other prisoners;

(e) [~~(f)~~] A prisoner with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners;

(f) [~~(g)~~] A prisoner with a communicable disease and other prisoners.

(3) The criteria to be used in the classification of other prisoner categories shall be as follows:

(a) Sentenced or unsentenced status.

(b) Felony or misdemeanor charge.

(c) Noncriminal and criminal status including a traffic violator, nonsupport case or civil contempt.

(d) Community custody prisoner including work release, and education release, weekender.

(e) Trustees. The jailer or his designee shall base selection of prisoners for trustee status on the following criteria:

1. The nature of the prisoner's offense and sentence;
2. Previous escape attempts; and
3. The prisoner's "day-to-day" behavior.

(4) A prisoner's classification shall be changed to reflect changes in his status, including the following:

(a) Court appearance by the prisoner;

(b) Disciplinary hearing and action; and

(c) Reevaluation of the prisoner's physical, emotional, or mental condition.

(5) The prisoner classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each detention facility with direct supervision areas shall, and other detention facilities may, develop a system of prisoner classification to assess prisoners for the purpose of:

(a) Protecting public or institutional safety;

(b) Providing an acceptable level of health care services; and

(c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.

(2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:

(a) Need for medical care;

(b) Need for mental health care;

(c) Propensity for suicidal behavior;

(d) Potential conflict arising from contact with another individual or group within the institution;

(e) Potential threat of escape;

(f) Potential threat to public safety if placed in a community release program;

(g) Potential risk to staff or another prisoner;

(h) Record of previous institutional behavior; and

(i) Assessment for participation in educational, vocational, rehabilitative, or work-related programming.

(3) Each classification system shall consider the development of the following components:

(a) An assessment of a prisoner upon intake to the facility to determine:

1. Legal custody;
2. Medical fitness for acceptance; and
3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.

(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements and the need for providing immediate health care, or other services.

(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the institutional population. The purpose of primary classification is to address the long term housing, supervision and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the institution associated with the placement.

(4) A reclassification component shall be developed that reassesses the prisoner's risk, need and housing assignment and supervision based upon either time, event, change of status or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview and observation of the prisoner or other information sources available to the institution.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the classification of prisoners in full-service jails

(b) The necessity of this administrative regulation: To conform

to the requirements of KRS 441.055. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 requires detention centers with direct supervision areas to establish a classification system for prisoners.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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 detention centers with direct supervision areas will have to establish a classification system for inmates if they do not have one.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [~~which~~] elect to house state prisoners. This administrative regulation establishes admission, search, and release procedures for full-service jails.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) A person in need of emergency medical attention shall not be admitted to the jail until a medical examination is conducted. A Denial of Admission form shall be completed, listing the reason for denial. The form shall be signed by jail personnel on duty.

(2) Jail personnel shall assure that each prisoner is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new admission and shall include the following:

(a) Time and date of commitment;

(b) Name, alias, nickname;

(c) Official charge, cite five (5) digit UOR number;

(d) Authority ordering commitment;

(e) Unit of government to be billed;

(f) Signature and title of arresting or committing officer;

(g) Date of birth;

(h) Race;

(i) Sex;

(j) Height and weight;

(k) Current or last known address;

(l) Telephone number;

(m) Marital status;

(n) Spouse or next of kin;

(o) Emergency contact including name, relation, address, telephone number;

(p) Employer, place of employment, telephone number;

(q) Social Security number;

(r) Health status including current medications, known allergies, diet or other special medical needs;

(s) Blood type, if known;

(t) The name of any known person in the jail who might be a threat to the prisoner; and

(u) Mental health history including past hospitalizations, comprehensive care treatment, current treatment, and medication.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions.

(a) Each prisoner shall be searched for contraband in a manner staff reasonably determine is necessary to protect the safety of fellow prisoners, staff, and institutional security.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion shall be based upon one (1) or more of the following:

1. A current offense involving felony violence, drug charges, or fugitive status;

2. A criminal history of offenses involving the use of a weapon or the possession of contraband;

3. Institutional behavior, reliable information, or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband;

4. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

5. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance, and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search shall be documented. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search.

2. Date and time of search;

3. [2.] Name of prisoner;

4. [3.] Name of person conducting search;

5. [4.] Type of search; and

6. [5.] Result of search.

(d) A strip search shall be conducted by a staff person of the same sex as the prisoner and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and

2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each jail shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving officer and the prisoner and kept for the jail record.

(b) If the prisoner is inebriated, is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify the transaction in paragraph (a) of this subsection. As soon as the prisoner is able to understand and account for his actions, the prisoner [he] shall sign the receipt.

(c) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

(3) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding religious practice.

Section 4. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 3:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with the jail staff[, judiciary,] or department personnel. Prisoners must follow the grievance procedure and attach a copy of the grievance documents when requesting a review by the Department of Corrections.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When a prisoner is released or removed for a legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel [the jailer] releases a prisoner to an out-of-state jurisdiction, jail personnel [he] shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner [him] at the time of release.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) Complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

Section 6. Incorporation by Reference. (1) "Denial of Admission" form is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8 a.m. to 4:30 p.m..

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

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CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes admission, search, and release procedures for full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(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 adds and revises definitions to comply with commission recommendations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:130. Prisoner programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100
STATUTORY AUTHORITY: KRS 441.055, 532.100(4)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [~~which~~] elect to house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

Section 1. Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure that [~~which~~] encourages the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of the programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

Section 3. Library Services. If resources are available in the community, library services may be made available to all prisoners.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television or other activities designed to relieve idleness and boredom.

Section 6. Programs for State Prisoners. (1) On-the-job training work programs. State prisoners may be provided the opportunity to participate in on-the-job training work programs in accordance with KRS 441.125.

(2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for treatment and are accepted by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space if available.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writ-

ing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for prisoner programs and services in full-service jail facilities.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 corrects a grammatical error.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in those full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner rights which shall address:

(a) Access to court.

(b) Access to attorney.

(c) Mail.

(d) Telephone.

(e) Grievance procedure.

(f) Search and seizure.

(g) Disciplinary procedure.

(h) Racial segregation.

(i) Medical care.

(j) Mental health care, if available.

(k) Religion.

(2) The statement of prisoner rights shall be posted in a conspicuous place in the booking area and living areas of the jail, and a copy shall be made available to the prisoner as soon after assignment as possible. Upon admission, a prisoner shall sign that he has received a written copy of the prisoner's rights.

(3) [(2)] The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) [(3)] The jailer shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.

(5) [(4)] The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend.

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners.

(c) A visit shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) [~~(5)~~] Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) [~~(6)~~] Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (4) of this section or established in subsection (5) of this section.

(8) [~~(7)~~] A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the jail;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) [~~(8)~~] The jail staff may monitor and record visitor and prisoner conversation. Notification shall be posted in a conspicuous location in the visiting areas for [~~jailer shall not listen to a visitor's conversation but may observe the visitation for~~] security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's [~~his~~] choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) [~~Telephone calls shall not be routinely monitored.~~] If calls are monitored, the prisoner shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, provided the security and order of the jail shall not be jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) Response, within ten (10) days [~~a reasonable time~~], to all grievance complaints, unless waived by the prisoner;

(2) Equal access for each prisoner;

(3) Guarantee against reprisal; and

(4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

(1) Jailers shall be required to report suicides or attempted suicides that constitute a serious health situation to the Kentucky Department of Corrections.

(2) All jail personnel shall receive a minimum of four (4) hours of mental health training within their first year of service.

(3) Each jail shall have a written policy and procedure outlining staff response to detainees who are at risk for suicide or have attempted or completed suicide.

(4) The Kentucky Department of Corrections and Kentucky Jailers Association shall coordinate the development of and revisions to mental health training curriculum.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to ensure the protection of rights of prisoners in those full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(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 allows recording of prisoner and visitor conversations for security.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, February 15, 2005 [~~May 13, 2003~~], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-03-01	Institutional Organization Assignment of Responsibility and Channels of Communication
RCC 01-04-01	Monthly Reports Performance Criteria
RCC 01-06-01	Inmate Access to and Communication with Staff
RCC 01-08-01	Public Information and News Media Access
RCC 01-10-01	Cooperation with Outside Bodies; Including Courts, ACA, Governmental Legislative, Executive, and Community Agencies
RCC 02-01-01	Fiscal Management: Organization
RCC 02-01-02	Fiscal Management: Accounting Procedures
RCC 02-01-03	Fiscal Management Agency Funds
RCC 02-01-04	Fiscal Management: Insurance
RCC 02-02-01	Fiscal Management Budget
RCC 02-02-02	Inmate Control of Personal Funds
RCC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RCC 02-02-05	Inmate Canteen Services
RCC 02-03-01	Fiscal Management Audits
RCC 02-04-01	Purchase Orders
RCC 02-04-02	Processing of Invoices
RCC 02-06-01	Property Inventory
RCC 03-02-01	Institutional Smoking Areas
RCC 04-01-01	Employee Training and Development
RCC 04-01-02	First Aid and CPR Training
RCC 06-01-01	Offender Records
RCC 06-03-01	Records Release of Information
RCC 06-03-02	Storage of Expunged Records
RCC 06-04-01	Court Trips
RCC 06-04-02	Receipt of Order of Appearance
RCC 07-01-01	Preventative Maintenance Plan
RCC 07-02-01	Permit Required Confined Space
RCC 07-03-01	Mechanical Equipment Repair and Control of Hazardous Energy
RCC 08-01-01	Fire Prevention
RCC 09-04-03	Duties and Responsibilities of the Fire and Safety Officer
RCC 10-01-02	Temporary Holding Cell Guidelines
RCC 11-01-01	Food Service: General Guidelines
RCC 11-02-01	Food Service: Security
RCC 11-03-01	Dining Room Guidelines
RCC 11-04-01	Food Service: Meals
RCC 11-04-02	Food Service: Menu, Nutrition and Alternative Items
RCC 11-05-02	Health Requirements of Food Handlers
RCC 11-06-01	Food Service: Inspections and Sanitation
RCC 11-07-01	Food Service Purchasing and Storage
RCC 12-01-01	Sanitation, Living Conditions and Clothing Issuances
RCC 12-01-02	Bed Areas
RCC 12-01-03	General Guidelines for Living Units
RCC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
RCC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
RCC 12-03-02	Barber Shop Services and Equipment Control
RCC 12-04-01	Institutional Inspections
RCC 12-05-02	Use of Noncombustible Receptacle
RCC 13-01-01	Organization of Health Services (Amended

2/15/05)
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 2/15/05)
RCC 13-03-01 Dental Procedures and Sick Call (Amended 2/15/05)
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 2/15/05)
RCC 13-04-02 Medical Intake Processing for Inmates in Hold Status (Amended 2/15/05)
[~~RCC 13-05-02 Licensure and Training Standards for Medical Department~~
~~RCC 13-06-01 Suicide Prevention and Intervention Program~~]
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 2/15/05)
RCC 13-07-01 Health Records (Amended 2/15/05)
RCC 13-07-03 Use of Pharmaceutical Products (Amended 2/15/05)
RCC 13-07-04 Self-administered Medication Program (Amended 2/15/05)
RCC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death (Amended 2/15/05)
RCC 13-10-01 Health Education and Special Health Programs (Amended 2/15/05)
RCC 13-11-01 Informed Consent (Amended 2/15/05)
[~~RCC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center~~]
RCC 13-13-01 Identification of Inmates with Psychological, Psychiatric or Severe Medical Disabilities and Transfer Guidelines (Amended 2/15/05)
RCC 13-15-01 Medical Restraints (Amended 2/15/05)
RCC 13-16-01 Specialized Health Services (Amended 2/15/05)
RCC 13-17-01 Vision Care and Optometry Services (Amended 2/15/05)
RCC 13-18-01 Infection Control (Amended 2/15/05)
RCC 13-19-01 Medical Waste Management (Amended 2/15/05)
RCC 13-20-01 Medical Services Co-pay (Added 2/15/05)
RCC 13-21-01 Mental Health Services (Added 2/15/05)
RCC 13-22-01 First Aid Kits (Added 2/15/05)
RCC 13-23-01 Injury Prevention (Added 2/15/05)
RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Added 2/15/05)
RCC 14-01-01 Inmate Rights and Responsibilities
RCC 14-02-01 Legal Services Program
RCC 14-03-01 Marriage of Inmates
RCC 16-01-01 Inmate Visiting (Amended 3/13/03)
RCC 16-01-02 Night Visiting Program (Amended 3/13/03)
RCC 16-01-03 Extended and Special Visits (Amended 3/13/03)
RCC 16-02-01 Telephone Communications (Amended 3/13/03)
RCC 16-03-01 Mail Regulations (Amended 5/13/03)
RCC 17-01-01 Assessment/Orientation Procedure for Intrasystem Transfers
RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 5/13/03)
RCC 17-03-01 Inmate Personal Property and Property Control (Amended 3/13/03)
RCC 17-05-02 Housing Unit Assignment Assessment and Classification Center (Amended 5/13/03)
RCC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RCC 17-05-04 Assessment Unit Operations, Rules and Regulations
RCC 17-05-05 Assessment Unit Operations and Reception Program
RCC 18-01-01 Classification Committees (Amended 3/13/03)
RCC 18-02-01 Classification Process (Amended 3/13/03)
RCC 18-03-01 Casework Services
RCC 19-01-01 Job and Program Assignments (Amended 3/13/03)
RCC 19-01-03 Farm Management and Production Guidelines
RCC 20-01-01 Education Program
RCC 20-01-02 Testing and Verification
RCC 20-01-03 Vocational Horticulture Program
RCC 21-01-01 Library Services (Amended 5/13/03)
RCC 22-01-01 Recreation and Inmate Activities (Amended 3/13/03)
RCC 22-03-01 Inmate Clubs and Organizations
RCC 22-03-02 Alcohol Anonymous and Narcotic Anonymous Club Sponsored Picture Project
RCC 22-04-01 Arts and Crafts Program (Added 3/13/03)
RCC 23-01-01 Religious Services (Amended 5/13/03)
RCC 24-01-01 Social Services and Counseling (Amended 3/13/03)
RCC 25-01-01 Furloughs (Amended 5/13/03)
RCC 25-05-01 Inmate Discharge Procedure (Amended 3/13/03)
RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 5/13/03)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services [~~the General Counsel~~], Justice and Public Safety Cabinet [~~Department of Corrections~~], 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing within five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the amended policies and procedures governing the operation of the Roederer Correctional Complex which directs employees in the safe and approved control of the inmate population and the security of the institution.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of Roederer Correctional Complex.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to institutional employees, as to duties and responsibilities that ensure the safe and secure operation of the institution.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments bring Roederer Correctional Complex policies and procedures up to date and make changes to comply with American Correctional Association standards.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.
(c) How the amendment conforms to the content of the

authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Roederer Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: It makes changes to reflect new procedures and may impact the safety and security of the institution and the public.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: approximately 260 employees of Roederer Correctional Complex, 963 inmates, and all visitors to Roederer Correctional Complex.

(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: To ensure a clearer understanding of the policies and procedures by employees, thereby impacting the security and safety of the institution and the public.

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

(a) Initially: None

(b) On a continuing basis: None

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

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:030. Fiscal management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth fiscal management procedures to be followed in restricted custody centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide residents with approved items not supplied by the center. The record of income, expenses and disbursements of the canteen shall be audited annually. The cost of this audit may be paid by the county's general fund, the jail's general fund or the jail's canteen fund.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fiscal management procedures for 501 KAR Chapter 7 regulation restricted custody jail facilities.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 requires an audit of canteen income, expenses and disbursements to comply with commission recommendations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 jails and the prisoners that are in the custody of the jails.

(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 jail will have to obtain an annual audit of the canteen if it has a canteen.

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

(a) Initially: The cost of the annual audit.

(b) On a continuing basis: The cost of the annual audit on a yearly basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The cost of the annual audit may be covered by the canteen account, the jail budget, county budget.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No state funds are required to implement the amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON 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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): The cost of the annual audit may be covered by the canteen account, the jail budget, county budget.

Other Explanation: The annual audit cost of the canteen account may be paid for out of the canteen account, the jail budget, or the county budget.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each center shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. Security employees shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage that is [~~salary~~] at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law applies.

Section 4. Training. Jail personnel whose jobs require prisoner supervision shall successfully complete a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or local basis or approved by the department if delivered by another agency.

Section 5. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every staff position.

Section 6. Physical Fitness. The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform his duties.

Section 7. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or a favor with a prisoner, his family, or friend;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;
4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;
5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner to physical or mental abuse;
8. Intentionally demean or humiliate a prisoner;
9. Bring a weapon or an item declared as contraband into the center without proper authorization;
10. Engage in critical discussion of staff or any prisoner in the presence of a prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with a prisoner; or
15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties.

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from superiors;
2. Treat prisoners in a fair, impartial manner; and
3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 requires a minimum of 2 staff members on duty.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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 will only affect any restricted custody center that does not already have the required staffing level. Additional staff will have to be hired if the jail does not already meet staffing levels.

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

(a) Initially: The cost of any additional staff that must be hired and is projected to be less than $20,000.

(b) On a continuing basis: This regulation will have a negligible effect on most jails because they already meet this staffing level.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: County government funds

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON 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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): The cost of this regulation is projected to be less than $20,000 per additional staff member.

Other Explanation: This regulation will have a negligible effect due to the fact that many current restricted custody centers are staffed with more than the minimum staff.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design and construction of centers and provides minimum standards for the renovation and construction of detention facilities and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075.

Section 1. Consultation. The department shall provide to a county government seeking to remodel an existing detention facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the center;

(7) Probable cost for operation of the center; and

(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A center shall not be built without site acceptance by the department. The following criteria shall be considered in site selection:

(1) Size;

(2) Proximity to court;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any detention facility, plans and specifications shall be submitted to the department for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction, a programming phase, to include:

(a) Evaluation of existing facility;

(b) Population analysis as based on the NIC staffing analysis, and may include, jail's operations, jail programs, court location and transportation issues;

(c) Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation cost;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations.

(2) A schematic phase containing:

(a) A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;

(b) A scale drawing of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

(c) Documentation of site as to:

1. Size;
2. Proximity to court;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawing of exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design development phase containing:

(a) A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) A construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised, if necessary, to include changes required by the department; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of the contracts for construction, financing and bonding;

(b) Signed copies of the construction permits; and

(c) Documentation of required review by other applicable state agencies.

(6) Every change order shall be submitted to the department for review and approval.

Section 4. Approval of Renovation, Construction Plans and Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department shall:

(a) Review each submission within thirty (30) days of receipt; and

(b) Issue a letter of:

1. Approval;
2. Acceptance with required changes; or
3. Rejection, with reasons stated.

(2) Depending on the site of the proposed construction, renovation, or addition the department may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, for review and approval.

(3) A changes to the plans shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 5. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards for an existing center if the department determines:

(a) That strict compliance shall cause unreasonable difficulties;

(b) That a waiver shall not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations of the center; and

(c) That compliance shall be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 6. Facility Design. (1) Each center shall have two (2) separate entrances: a prisoner entrance and a service entrance. The department may permit these entrances to be combined.

(a) Prisoners' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for prisoners.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It should be located in close proximity to storage rooms and the kitchen area.

(2) Each exit in the security area shall be secured.

(3) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the prisoner entrance and shall be used to monitor the movement of prisoners in and out of the facility.

(b) Visitation. Adequate space shall be made available for contact visits between prisoners and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

(c) Multipurpose room. The purpose of this area is to provide space for assembly of prisoners for specific program activities. Adequate furnishings shall be provided.

(d) Conference area. The purpose of this space is to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(e) Living areas.

1. Each sleeping room shall provide a minimum of forty (40) [~~fifty (50)~~] square feet per prisoner. No more than forty (40) [~~thirty-six (36)~~] prisoners shall be placed in a single sleeping room, with the exception of a direct supervision area as outlined in 501 KAR Chapter 3.

2. Each prisoner shall be provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet or locker space for the storage of personal items.

3. A sleeping area shall have lighting of at least twenty (20) foot-candles in the reading and grooming area, with a nightlight capable of providing five (5) foot-candles of light.

4. The facility shall have one (1) toilet for every ten (10) [~~eight (8)~~] prisoners, one (1) washbasin for every ten (10) [~~eight (8)~~] prisoners and a shower for every twenty (20) [~~sixteen (16)~~] prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.

5. Phone facilities shall be available for prisoner use.

6. Each occupied area shall have temperature ranges within comfort zones, sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit.

7. Each occupied area shall have ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:105.

(f) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the Retail Food Code, 902 KAR 45:005. If food is not prepared in the facility, a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities shall be available.

(h) Furnishings. Center furnishings shall be noncombustible and nontoxic as, approved by the department.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White, Director (502) 564-7290

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes minimum standards for the design, construction and renovation of restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 lessens the space and toilets required for design and construction of restricted custody centers.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: Additional square footage

(b) On a continuing basis: Additional bed space

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:
None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): The additional square footage will create additional bed space and may generate added revenues.

Expenditures (+/-): The additional square footage will create additional bed space. This addition will create an additional cost for these inmates.

Other Explanation: The additional square footage will create additional bed space. This addition will generate additional income with marginal expenses.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:060. Security; control.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the center's operation.

(2) The department shall provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules and regulations;

(b) Staffing;

(c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;

(g) Movement of prisoners;

(h) Emergency situations;

(i) Center schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Center personnel shall conduct rounds of the center at least every sixty (60) minutes.

(2) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

(3) Males and females shall be housed separately.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to any prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The center rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the center. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) A weapon, ammunition, chemical agent, related security equipment, or an object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. A firearm shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(3) All weapons, ammunition, chemical agents, or related security equipment, when not being carried or used, as authorized by the jailer, shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected [~~monthly~~] to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of center personnel, and shall be provided with proper safety equipment.

(7) A prisoner may be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of staff.

(8) A prisoner shall not be:

(a) Permitted to perform or assist in a security duty; or

(b) Assigned to a position of authority over another prisoner.

(9) A prisoner and his belongings shall be searched, in accordance with the guidelines established in 501 KAR 7:120, whenever entering the security perimeter.

(10) Written procedures shall be developed for transporting outside the center.

(11) Each center shall have key control procedures.

Section 4. Daily Center Log; Special Reports. A daily center log shall be kept current and shall reflect significant occurrences within the center. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences:

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide that constitutes a serious health situation;

(d) Escape or attempted escape;

(6) Prisoner vandalism;

(a) Destruction of center property.

(b) Flooding of plumbing fixtures.

(7) Staff roster for each shift;

(8) Visitors' log;

(9) Fire emergency planning sessions, pursuant to 501 KAR 7:070, Section 1(1).

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Jail Standards Commission; Commissioner, Department of Corrections

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes security procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 requires that males and females be housed separately.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [~~which~~] elect to house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall work with its local fire department to develop [~~have~~] a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners, visitors, and staff. The policy shall include:

(a) Provision for a fire emergency planning session for staff at least quarterly;

(b) Written documentation of the fire planning session;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by staff monthly;

(e) Smoking restrictions and regulations; and

(f) An evacuation plan coordinated with local fire officials. This plan shall be approved by the Department of Corrections.

(2) Each center shall have written policy and procedures for emergency situations including:

(a) Escape;

(b) Hostage taking;

(c) Riot;

(d) Food poisoning;

(e) Civil disturbance in the community;

(f) Natural disaster;

(g) Suicide; and

(h) Other death and disorder.

Section 2. Physical Plant. (1) The center shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:105. An existing center for which approval has been granted may continue without change, except when a significant alteration [~~an alteration~~], addition or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;

(b) Visible at all times;

(c) Kept clear; and

(d) Maintained in usable condition.

(3) Each center shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) [~~In each area where a prisoner may be confined, there shall be an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.~~

~~(5)~~] Each center shall have an approved fire alarm and smoke detection system.

(5)[~~(6)~~] Each [~~direct supervision~~] area shall have an approved fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commisioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes plan approval requirements.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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.

4. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055. 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted community centers.

Section 1. Procedures. (1) The jailer shall provide for:

(a) The control of vermin and pests; and

(b) Both solid and liquid waste disposal.

(2) The jailer shall have a written preventative maintenance plan which includes schedules for:

(a) Cleaning various specified locations and items in the center;

(b) Inspections by the jailer;

(c) Trash and garbage removal; and

(d) Periodic inspection and maintenance of specified mechanical equipment.

(3) The center shall have fresh, purified air circulating within each prisoner living or activity area.

(4) The center shall furnish clean, sanitized bedding to prisoners, including:

(a) One (1) penal mattress;

(b) [~~One (1) mattress cover;~~

~~(c)~~] One (1) blanket, when conditions require;

(c) Two (2) sheets [~~(d) One (1) sheet~~];

(d)[~~(e)~~] One (1) pillow; and

(e)[~~(f)~~] One (1) pillowcase, if applicable.

(5) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week;

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner;

(c) Mattresses and pillows shall be cleaned quarterly.

(6) Each prisoner shall be issued a clean towel. Towels shall be laundered weekly, or more as needed [~~every fourth day~~].

(7) Provisions shall be made for laundering prisoner clothing at least once a week.

(8) Floors, toilets, and sinks shall be washed daily or more often as necessary.

(9) Showers shall be cleaned on at least a weekly basis.

(10) Prisoners shall be issued or permitted to obtain the following hygienic items:

(a) Soap;

(b) Toothbrush;

(c) Toothpaste;

(d) Toilet paper; and

(e) Female sanitary supplies, where applicable. An indigent prisoner shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for proper sanitation and hygiene in restricted community centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes part of the regulations required concerning jails by the authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds and revises procedures for proper sanitation and hygiene to comply with commission recommendations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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 restricted custody jails may have to purchase additional sheets to meet the new requirement to provide two sheets rather than one.

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

(a) Initially: The minimal cost of the sheets will depend on the number of sheets currently owned and the number of prisoners the jail houses.

(b) On a continuing basis: The minimal cost to replace sheets as they wear out or are damaged.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: County government 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): A minimal cost will occur for the purchase of additional sheets.

Other Explanation: A minimal cost will occur for the purchase of additional sheets; however a cost savings will occur when the mattress covers are not required.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes admission, search, and release procedures for restricted custody centers.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) The center staff shall ensure that each prisoner is transferred under proper legal authority by a duly authorized officer.

(2) Prisoner records shall be delivered to the center at the time of admission. The admitting officer shall make certain that all required forms are complete and that information is current.

Section 3. Searches. (1) The center staff shall conduct a search of each prisoner and his possessions upon admission.

(a) Each prisoner shall be searched for contraband in a manner as responsible staff reasonably determine is necessary to protect the safety of fellow prisoners, staff and institutional security. The search shall be conducted in a private area and in a manner which protects the prisoner's dignity to the extent possible in that particular center.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion shall be based upon one (1) or more of the following:

1. A current offense involving felony violence, drug charges, or fugitive status;

2. A criminal history of offenses involving the use of a weapon or the possession of contraband;

3. Institutional behavior, reliable information, or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband;

4. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

5. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search shall be documented. Documentation shall include:

1. Date and time of search;

2. Name of prisoner;

3. Name of person conducting search;

4. Type of search; and

5. Result of search.

(d) A strip search shall be conducted by a staff person of the same sex as the prisoner, and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and

2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each center shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving officer and the prisoner.

(b) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

Section 4. Orientation. (1) The prisoner shall sign to indicate if he has received an oral and a written copy of the prisoner orientation information. This document shall be placed in the prisoner's file [~~As soon after assignment as possible an oral or written orientation shall be made available to each prisoner~~]. Special assistance shall be given to any illiterate or non-English speaking prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 7:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs;

(e) Procedures for making a request or registering a complaint with the center's staff[~~, judiciary,~~] or department personnel. Prisoners shall follow the grievance procedure and attach copies of the grievance forms when requesting a review by the Department of Corrections.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When any prisoner is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel [~~the jailer~~] releases a prisoner to an out-of-state jurisdiction, jail personnel [~~he~~] shall consult with the appropriate prosecutorial [~~prosecuting~~] office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner at the time of release.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

Section 6. Transfer. (1) The jailer shall develop policy and procedure to determine the conditions under which a prisoner becomes ineligible to remain at the restricted custody facility and shall be transferred to the secure jail.

(2) A prisoner transferred to the secure jail shall be accompanied by:

(a) An incident report specifying the reasons for the transfer;

(b) The prisoner's record; and

(c) The prisoner's personal property.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes admission, search, and release procedures for restricted custody jail facilities.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 for an acknowledgment when orientation information is given to a prisoner.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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.

4. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055. 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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 7:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:

(a) Access to court;

(b) Access to attorney;

(c) Mail;

(d) Telephone;

(e) Grievance procedure;

(f) Search and seizure;

(g) Disciplinary procedure;

(h) Racial segregation;

(i) Medical care;

(j) Counseling, if available; and

(k) Religion.

The statement of prisoner rights shall be posted in a conspicuous place in the booking and living areas of the center and a copy shall be made available to the prisoner as soon after assignment as possible, and upon admission, the prisoners shall sign that they have received a written copy of the prisoners' rights.

(2) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(3) The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative.

(4) The jailer shall have a written policy which defines the center's visitation rules and administrative regulations, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;

(b) At least one (1) visit per week per prisoner shall be allowed except when a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;

(c) A visit shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; or

(e) Children, when accompanied by an adult, shall be permitted to visit a prisoner.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (4) of this section or established in subsection (5) of this section.

(7) A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the center;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(8) The jail staff may monitor and record visitor and inmate conversation. Notification shall be posted in a conspicuous location in the visiting areas [~~jailer shall not listen to a visitor's conversation but may observe the visitation~~] for security reasons.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the center.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(2) [~~Telephone calls shall not be routinely monitored.~~] If calls are monitored, the prisoner shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:

(a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and

(b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.

(2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, provided the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) Response shall be within ten (10) days [~~, within a reasonable time~~] within a reasonable time, to all grievance complaints;

(2) Equal access for each prisoner;

(3) Guarantee against reprisal; and

(4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures to ensure the rights of prisoners for in restricted custody jail facilities.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.

(2) If 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 allows monitoring of visitor and prisoner conversations and requires visitors to present identification.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 restricted custody jails and the prisoners that are in the custody of the jails.

(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: None

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 will affect. County jails that house state inmates.

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. The regulation relates to county jails that house state inmates by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None

Expenditures (+/-): None

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 198B.650-198B.689, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails which do not elect to house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that [~~which~~] do not house state prisoners.

Section 1. Definitions. (1) "Life Safety Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 441.005 [~~67B.020~~], operated by and under the supervision of any county, regional jail authority, city or urban county government that [~~which~~] does not house state prisoners as defined by KRS 532.100. There shall be no new or reopening of any life safety jails.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail's custody [~~jail~~].

Section 2. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department of Corrections with a weekly population update [~~that shall include the number of state prisoners, federal prisoners, and county prisoners~~].

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Security employees shall be at least twenty-one (21) years of age.

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 3. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050 [~~for jails which elect to house state prisoners~~].

(2) All furnishings in the jail shall be noncombustible and nontoxic as approved by the Department of Corrections.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45:005.

(b) Commercial type stoves and refrigeration units.

(c) Walls, floors, and decks [~~ceiling~~] shall be approved fire rated masonry, concrete or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by staff.

(5) The jail shall provide ventilation to meet air exchange as required in the state health codes, KRS 198B.650 to 198B.689, 803 KAR 2:317, and 902 KAR 45:005.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of prisoners, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at least quarterly.

(b) Written documentation of fire planning sessions.

(c) A fire safety inspection by the Department of Corrections at least once a year.

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) [~~Each jail shall comply with the NFPA Life Safety Code (1981 Edition).~~

~~(3)~~] Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) [~~(4)~~] Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) [~~(5)~~] In all areas where a prisoner may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(5) [~~(6)~~] Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh [~~and purified~~] air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running

water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid and C.P.R., as offered by the American Red Cross and the [~~office of Corrections Training,~~] Department of Corrections, Division of Corrections Training.

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, diet or other special medical needs) shall be completed on each prisoner during admission.

(4) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

Section 7. Food Services. (1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45:005.

(2) The jail shall provide prisoners with a diet containing 2400 calories daily and jail menus shall be approved annually by a nutritionist or dietician.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for medical diets if prescribed by a medical authority.

(5) The jailer shall provide for religious diets.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A staff member shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of a staff member.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) [~~Food shall not be prepared in prisoner living areas, except~~] Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

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

~~(a) "Kentucky Building Code, 2002 edition"; and~~

~~(b) "NFPA Life Safety Code, 1981 edition".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Local Facilities, Department of Corrections, 275 East Main Street, PO Box 2400, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005

FILED WITH LRC: February 15, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that elect not to house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required concerning jails by the authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the minimum standards for jails that elect not to house state prisoners.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.

(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing not to house state prisoners with the minimum standards required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 15 jails and the prisoners that are in the custody of the jails.

(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: Jails will have a lower standard for space allowed for each prisoner allowing a jail to house more prisoners. A small number of life safety jails do not already provide 2 staff members for 24-hour supervision of prisoners and will have to hire additional staff.

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

(a) Initially: The cost of wages to hire any additional staff.

(b) On a continuing basis: The yearly cost of wages for any additional staff that is hired.

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

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

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

FISCAL NOTE ON 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 will affect. Life Safety County jails.

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.

4. The regulation relates to county jails that elect not to house state inmates and is part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

5. 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 (+/-): Revenue may increase if the reduction in space per prisoner allows a jail to house additional prisoners.

Expenditures (+/-): The direct cost of providing 24-hour supervision for the jail.

Other Explanation: A the present time, a small number of life safety jails do not provide 2 staff members for 24-hour supervision of the inmates. The cost is directly related to the wages that are paid to hire additional staff.

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 3:030. Insurance requirements.

RELATES TO: KRS 160.105

STATUTORY AUTHORITY: KRS 156.070, 160.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.105 directs the Kentucky [State] Board of [for Elementary and Secondary] Education to require by administrative regulation that each school district provide for fire and extended insurance coverage on nonsurplus buildings, at not greater than replacement cost but allowing for coinsurance and deductible features. This administrative regulation implements that function by providing for a level of insurance coverage on school district buildings and structures sufficient to protect both the local school districts and any school revenue bond holders, as their interests may appear.

Section 1. (1) A [Each] local board of education shall procure [submit to the chief state school officer for his approval, not less than sixty (60) days nor more than 120 days prior to the date of awarding] insurance coverage, [a schedule of values] which reflects the estimated replacement cost, actual cash values, and the amount of fire and extended insurance coverage provided for each building and its contents owned by the local board of education which is not surplus to its needs as shown by the approved facilities plan.

(2) A [Each such] building and its contents shall be insured for an amount equal to 100 percent of the replacement cost [thereof] as shown on the schedule of values, and each policy covering the [such] buildings and contents shall provide an agreed amount endorsement.

(3) The replacement cost of the building shall include the increased cost of construction brought about by code changes that have occurred since the original structure was built and which would be required to be incorporated within the rebuilt structure.

(4) Despite the required insuring of individual buildings and contents at 100 percent of replacement cost, a blanket limitation on an insurance carrier's liability per occurrence may be procured [approved by the chief state school officer] if an individual district's schedule of values exceeds $100,000,000 and if the blanket limitation equals at least $100,000,000 and[, in addition,] at least fifty (50) percent of total replacement costs [as reflected by the approved schedule of values].

Section 2. Insurance on property specified in Section 1 shall be provided by carriers licensed to do business in the State of Kentucky and shall have features that provide for:

(1) A minimum of eighty (80) percent coinsurance;[,]

(2) A per occurrence deductible on all perils not to exceed five (5) percent of the prior year's capital outlay allotment or $10,000, whichever amount is smaller;[,] and

(3) A replacement cost endorsement.

Section 3. A building [Buildings] requiring insurance and containing a steam boiler [boilers] shall have boiler and machinery coverage having a limit of liability equal to the total value of the real and personal property in the building in which the steam boiler is located.

Section 4. A school district [districts] may cover property in a self-insurance pool providing coverage at least equal to the standard of coverage specified in Sections 2 and 3 of this administrative regulation. [Such] A self-insurance pool shall be adequately reinsured by a carrier approved to do business in the state of Kentucky and shall provide facilities for insuring all of the property of an individual district to which this administrative regulation applies.

Section 5. If [In the event] a school building cannot be insured on a replacement cost basis, the policy insuring the building shall carry an agreed amount endorsement, and a certification signed by the local superintendent and board chairman shall be attached to the policy stating that it would not be fiscally responsible to provide replacement cost coverage for the building being insured.

Section 6. Insurance coverage provided for in Sections 2 and 3 of this administrative regulation shall be obtained by local school districts by bids [submitted on standard bid forms provided by the chief state school officer] after having advertised for bids, if [where] bids are required by KRS Chapter 45A or 424 [as applicable].

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
KEITH TRAVIS, Chair

APPROVED BY AGENCY: February 10, 2005

FILED WITH LRC: February 10, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 23, 2005, at 10 a.m. in the State Board Room, 1st Floor, 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 March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 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 requires that each local school district provide for fire and extended insurance coverage on nonsurplus buildings and provides a level of insurance coverage on school district buildings and structures sufficient to protect both local school districts and school revenue bond holders.

(b) The necessity of this administrative regulation: This regulation implements the provisions of KRS 160.105.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the local boards with the guidelines for providing fire and extended insurance coverage including specific features of the insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidelines to local districts in securing fire and extended insurance coverage for nonsurplus buildings.

(2) If 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 regulation will delete the requirement for submission of the schedule of values to the Kentucky Department of Education (KDE) and will eliminate the requirement for KDE approval of he schedule of values.

(b) The necessity of the amendment to this administrative regulation: Having local school districts submit their schedule of values to the KDE for approval is not necessary since independent certified public accountants audit local school districts annually. These auditors, as part of the verification of assets, review the insurance coverage on buildings and equipment.

(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated guidelines for districts in securing fire and extended insurance for nonsurplus buildings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts, licensed insurance carriers, independent auditors, 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 regulation, if new, or by the change if it is an amendment: There will be less reporting obligation on the part of the local school districts and less paper processing for the Department of Education.

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

(a) Initially: No additional costs to the agency to implement this amendment.

(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: Agency 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: No increase in funds 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.

(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 CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 5:110. Vocational pupils, reimbursement for.

RELATES TO: KRS 156.031, 157.370

STATUTORY AUTHORITY: KRS 156.070, 157.320, 157.370

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 157.370 requires a local board of education to be reimbursed separately from the Fund to Support Education Excellence in Kentucky for the cost of transporting pupils from a parent school to a vocational-technical school or to a vocational education center, according to Board of Education [~~State Board for Elementary and Secondary Education~~] administrative regulations. This administrative regulation establishes the terms under which reimbursement will be paid to those districts that [~~so~~] transport their secondary school pupils and establishes the reimbursement limits.

Section 1. A [~~Any~~] local district may provide bus transportation for the district's secondary school pupils from their parent school to a vocational school (e.g., a state vocational-technical school, an area vocational education center, or to a vocational training site) where an integral part of the basic vocational instructional program is being provided. [~~For the purpose of these administrative regulations, the place or site where the pupil receives basic vocational training shall be referred to as a vocational school.~~]

Section 2. An application showing anticipated transportation of [~~All applications to transport~~] pupils to a vocational school for which reimbursement is to be claimed shall be submitted to the Office of District Support Services [~~Division of Pupil Transportation~~] for approval on or before October 1 of the current school year.

Section 3. A request [~~Requests~~] for reimbursement for transportation to a vocational school shall be the responsibility of the district providing the transportation.

Section 4. A request [~~Requests~~] for reimbursement for actual transportation to a vocational school shall be made on an annual [a ~~monthly~~] basis on or before June 30 of the current school year to the Office of District Support Services [~~Division of Pupil Transportation in the Office of School Administration and Finance~~] in the Department of Education.

Section 5. Tentative funding in the current year shall be based upon information submitted on district applications. Any necessary adjustments shall be made in the following year based on the actual transportation provided.

Section 6. A local district [~~districts~~] that transports [~~transport~~] pupils to a vocational school on buses owned and operated by the district shall be reimbursed for these expenditures as follows [~~and to the following extent~~]:

(1) Bus mileage at a rate not to exceed the average cost per bus mile for county school districts, exclusive of driver's cost, as calculated by the Office of District Support Services [~~Division of Pupil Transportation~~] for the previous school year; and

(2) The vocational school bus driver's cost at an hourly rate not to exceed the hourly rate paid by the district to a driver in the district's regular transportation program with similar qualifications.

Section 7. [~~6.~~] If a district's pupils are transported to a vocational school over a toll road as the nearest or best route, either on a board-owned bus or a bus contracted to the board, the district shall be reimbursed for the toll road fee in addition to mileage and driver's cost.

Section 8. [~~7.~~] A district that contracts for the transportation of

its pupils to a vocational school shall be reimbursed an amount not to exceed the total amount that would result when the vocational school bus mileage is multiplied by the average cost per bus mile for county districts exclusive of driver's cost, and when the driver's total hours are multiplied by the average hourly rate paid by county school districts plus necessary toll road fees. The average mileage cost and average hourly rate shall be those calculated by the Office of District Support Services [~~Division of Pupil Transportation~~] for the previous school year.

Section 9.(1) [~~8.~~] Bus mileage shall be calculated from the parent school to the vocational school over the nearest and best route. When the same bus is used to transport pupils to a vocational school from more than one (1) school within the same district, bus mileage shall be calculated from the school located farthest from the vocational school over the nearest and best route as the bus serves the other schools en route to the vocational school.

(2) A bus round trip shall be considered the transportation of the student to and from a vocational school. A bus driver transporting students on a bus from a high school to a vocational school and returning back without the students to the high school shall be considered to have made half of a round trip. Similarly, a bus driver departing from the high school without the students, going to the vocational school and returning back to the high school with the students shall be considered to have made half of a round trip.

Section 10. [~~9.~~] The total hours of driver's pay per day that will be reimbursed for transporting pupils to a vocational school shall be calculated on the basis of what the driver does while the pupils are in class at the vocational school as follows [~~and shall be done by one (1) of these methods~~]:

(1) If the driver waits at the vocational school for the full time that the pupils are in class, the driver's time shall start when the bus leaves the parent school farthest from which pupils are transported to the vocational school and shall stop when the pupils are returned to the farthest parent school;[~~.~~]

(2) If the driver unloads the pupils at the vocational school, then takes the bus to another location and returns to pick up the pupils when the classes are finished, the first half of the drivers time shall start when the bus leaves the parent school farthest from the vocational school and ends when the driver reaches the point where the bus is parked until time to make the bus trip to the vocational school to return the pupils to their parent school. The second half of the driver's time shall start when the bus leaves the point where the bus was parked and ends when the bus reaches the parent school farthest from the vocational school; and [~~.~~]

(3) If [~~Insofar as it is~~] possible or practical, the district shall pay the bus driver by the method that results in the least cost when the driver's time and the required bus mileage are considered in combination.

Section 11. [~~10.~~] The driver of the bus that transports pupils to a vocational school shall meet the same requirements as the district's bus drivers that transport pupils to the district's public schools.

Section 12. A [~~11. The~~] school district [~~districts~~] shall be reimbursed for the cost of vocational school transportation for the actual number of days that pupils were transported to the vocational school up to a maximum of 175 days per school year.

Section 13. [~~12.~~] One (1) district may make a contract with another district to transport the other district's pupils to a vocational school on the same bus with the transporting district's pupils or on a separate bus. [~~Any such contract shall be made subject to approval by the Division of Pupil Transportation.~~]

Section 14. [~~13.~~] When one (1) district contracts to provide a bus or buses to transport another district's pupils to a vocational school, the district providing the bus or buses shall claim additional reimbursement only for the extra bus miles required and the extra hours of bus driver time required to provide this service for the other district.

Section 15. [~~14.~~] A district shall make maximum use of the bus that transports pupils to a vocational school through planning and routing. The use of more than one (1) bus for transporting pupils from any school or group of schools to a vocational school shall be approved only when the length of time required for one (1) bus to pick up and transport the pupils would be impractical or when the number of pupils on one (1) bus would exceed seating capacity.

Section 16. A district [~~15. Districts~~] shall not be reimbursed for the transportation of vocational school pupils on field trips, excursions, competitions, or recreational trips.

Section 17. A district [~~16. Districts~~] shall not be reimbursed for the vocational transportation from the parent school to the vocational school if [~~when~~] the vocational school is on the same grounds or on adjacent grounds to the parent school or within one-half (1/2) mile of the parent school.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulations prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair

APPROVED BY AGENCY: February 10, 2005

FILED WITH LRC: February 10, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 23, 2005, at 10 a.m. in the State Board Room, 1st Floor, 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 March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 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 established the terms under which reimbursement will be paid to those districts that transport their secondary school pupils to a vocational-technical school or to a vocational education center.

(b) The necessity of this administrative regulation: This regulation implements the provisions of KRS 156.031, 156.070, 157.320 and 157.370.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the local boards with the terms under which they can receive reimbursement for the transportation of vocational education students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidelines to local districts in securing reimbursement for transporting vocational education students.

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

(a) How the amendment will change this existing administrative regulation: These amendments will change the requests for reim-

bursement submitted by local districts from monthly to annually, thereby significantly reducing paperwork for local districts and the Department of Education (KDE).

(b) The necessity of the amendment to this administrative regulation: This amendment will significantly reducing paperwork for local districts and the KDE.

(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated guidelines for districts when securing reimbursement for transportation of vocational education students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 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 regulation, if new, or by the change if it is an amendment: There will be less reporting obligation on the part of the local school districts and less paper processing for the Kentucky Department of Education.

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

(a) Initially: No additional costs to the agency to implement this amendment.

(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: Agency 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: No increase in funds 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.

(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 CABINET
Board of Education
Department of Education
(Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 156.101, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095 and 156.0951 authorize the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development training, with the purpose of the program being the improvement of instruction in the public schools; KRS 158.070 requires the state board to promulgate administrative regulations establishing guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development experiences [~~activities~~] for the professional staff. This administrative regulation identifies the components of professional development planning and requires each school and local district to incorporate in its school or district improvement plan, the professional development program for the school or district. This administrative regulation establishes this program as an integrated set of high-quality professional development experiences linked to the goals of the improvement plan or the individual professional growth plans of teachers. Finally, this administrative regulation provides for [~~submit annually professional development plans by which they are to be guided in providing suitable professional development training programs and in requiring~~] all instructional leaders to participate in a statewide training program implemented under KRS 156.101.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "High-quality professional development" means those experiences that systematically, over a sustained period of time, enable educators to facilitate the learning of students by acquiring and applying knowledge, understanding, skills, and abilities that address the instructional improvement goals of the school district, the individual school, or the individual professional growth needs of the educator.

(2) "Improvement plan" means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished in the school or district relative to established standards, goals, or objectives for improvement.

(3) "Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas.

[~~(2) "Professional development" means those experiences which systematically, over a sustained period of time, enable educators to acquire and apply knowledge, understanding, skills, and abilities to achieve personal, professional and organizational goals and to facilitate the learning of students.~~

~~(3) "Professional development plan" means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished relative to defined standards, goals, or objectives.~~]

(4) "Professional development program" means a process of professional development that is measurable by indicators and [~~. It~~] may be composed of several initiatives.

Section 2. Each local school and district shall develop a process for the development of a professional development program. The process shall include the method for evaluating each professional development experience for its impact on student learning and for improving professional development initiatives [~~professional development~~]. This process shall lead to a program of high-quality professional development experiences that [~~plan that describes training activities which~~] the school and district will provide for its instructional and administrative [~~certified~~] staff within the goals as established in KRS 158.6451 and local needs assessment. A school professional development program shall be incorporated into the school improvement plan and made public prior to the implementation of the school program. The local district program shall be incorporated into the district improvement plan and posted to the local district website prior to the implementation of the program. [~~The local district and school plans shall be submitted to the Department of Education prior to the implementation of the plans.~~]

Section 3. Each school and local district improvement plan shall meet the following six (6) standards related to the professional development program: [~~shall have on file with the Department of Education a professional development plan that meets the following six (6) standards:~~]

(1) There is a clear statement of the school or district mission;

(2) There is evidence of representation of all persons affected by the professional development program;

(3) Application of needs assessment analysis is evident;

(4) Professional development objectives are focused on the school or district mission and derived from needs assessment;

(5) The professional development program and implementation strategies are designed to support school or district goals and objectives; and

(6) A process for evaluating professional development experiences for its impact on student learning and improving professional development initiatives is incorporated in the plan.

Section 4. (1) The school or district improvement plan [~~professional development plan~~] shall address any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451.

(2) High-quality professional development experiences [~~Professional development activities~~] shall be related to teachers' instructional assignments and administrators' professional responsibilities. Experiences [~~Activities~~] shall support the local school's instructional improvement goals and be aligned with the school or

district improvement plan or individual professional growth plans of teachers [~~objectives identified in the professional development plan~~].

(3) Experiences [~~Activities~~] for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) A district may report flexible professional development experiences [~~activities~~] on unpaid, noncontact snow days. This shall require a district calendar change and the change shall be reported to the Department of Education.

(5) Professional development experiences that relate to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in Title 16 KAR [~~704 KAR Chapter 20~~].

(6) Professional development grant dollars may be used for college or graduate course tuition reimbursement for a teacher in specific academic subject content areas in math, science, English/language arts, social studies, arts and humanities for which the teacher [~~he~~] is assigned to teach. The use of professional development funds for this purpose shall be specified in the district improvement [~~professional development~~] plan approved by the school board or the school plan approved by the school council as to funds under its control. Particular content areas and grade levels which qualify for reimbursement may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and instructional need.

(7) Professional development credit shall not be awarded for those experiences [~~activities~~] that provide remuneration beyond travel, food, lodging or tuition.

(8) A school district implementing a flexible professional development schedule shall award professional development credit for any experience that addresses the goals of the school or district improvement plan or the individual professional growth plans of teachers [~~given academic school year within the professional development plan.~~

~~(9) Appropriate professional development experiences shall be those which address instructional improvement for the school district, an individual school or a group of teachers in accordance with goals identified from the needs assessment~~].

(9) Experiences that do not qualify as high-quality [~~(10) Activities which are not appropriate as~~] professional development experiences shall include the following:

(a) Organizational business meetings;

(b) Compiling class rosters;

(c) Scheduling (including training on the operation of student management software);

(d) Textbook adoption committee meetings;

(e) Writing lesson plans;

(f) Housekeeping duties;

(g) Faculty meetings;

(h) Extracurricular activities;

(i) PTA/PTO meetings;

(j) Sporting events;

(k) Field trips; [~~and~~]

(l) Parent-teacher conferences.

(m) CPR/First Aid;

(n) Blood-born Pathogens;

(o) Athletic Seminars;

(p) School-based decision making (SBDM) training for non-council members;

(q) Kentucky Teacher Internship Program (KTIP) mentor training; and

(r) Other professional development training that is not state mandated or is not included in the district or school improvement plan or in an individual's growth plan shall not be considered high-quality or appropriate professional development.

(10) [~~(11)~~] Parent-teacher conferencing skill development shall be permissible as professional development.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:

(a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 16 KAR 4:010 [~~704 KAR 20:165~~];

(b) Experience in professional development planning; and

(c) A demonstrated ability to connect professional development with effective instructional practices and student achievement data.

(2) Duties of the district professional development coordinator shall include:

(a) Conducts the district professional development needs assessment;

(b) Coordinates the intradistrict alignment of goals, objectives, and experiences [~~activities~~] for professional development;

(c) Provides technical assistance to school councils, staff and professional development committees in the alignment of professional development experiences [~~activities~~] with school goals as identified through the local school improvement planning process;

(d) Disseminates professional development information to school councils, staff members, and professional development committees;

(e) Coordinates the planning, implementation and evaluation of the district professional development program that [~~which~~] is aligned, supportive, and developed in conjunction with local school improvement plans;

(f) Upon request by a school council or school staff, provides technical assistance on the evaluation and coordination of school-based professional development experiences [~~activities~~];

(g) [~~(5)~~] Coordinates the establishment of local policies, procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training, including fiscal management;

(h) Maintains, verifies and, when appropriate, submits district and school professional development records, documentation, and other pertinent information to the Department of Education;

(i) Explains the district's professional development programs' objectives, results, and needs to school professionals, district staff, the board members, civic and parent groups, teacher training institutions and others as requested; and

(j) Maintains a professional contact with the Department of Education and other agencies involved in providing professional development experiences [~~activities~~].

Section 6. A maximum of fifteen (15) percent of the district's professional development grant may [~~More than fifteen (15) percent of the district's professional development grant shall not~~] be used for administrative purposes.

Section 7. When implementing professional development programs under KRS 158.070, a local school or district shall adhere to its school or district improvement plan [~~professional development plan~~].

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 156.0170(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair

APPROVED BY AGENCY: February 10, 2005

FILED WITH LRC: February 10, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 23, 2005, at 10 a.m. in the State Board Room, 1st Floor, 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 March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 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 identifies the components of professional development planning and requires each school and local district to incorporate in its school or district improvement plan, the professional development program for the school or district. This administrative regulation establishes this program as an integrated set of high-quality professional development experiences linked to the goals of the improvement plan or the individual professional growth plans of teachers. Finally, this administrative regulation provides for all instructional leaders to participate in a statewide training program implemented under KRS 156.101.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.095 and 158.070.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the type of professional development program that school districts should provide to their instructional and administrative staff, (KRS 156.095(5)). It provides specific guidelines for the duties of the professional development coordinator, (KRS 156.095(2)). It gives guidance as to what constitutes appropriate professional development and the appropriate use of the 4 professional development days required in KRS 158.070(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the planning of the professional development program, the duties of the professional development coordinator, and the use of the required 4 days of professional development in the school calendar.

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

(a) How the amendment will change this existing administrative regulation: It will clarify the practices that districts should follow to ensure an effective professional development program. It will also bring the regulation in alignment with current federal requirements for professional development as well as state practice.

(b) The necessity of the amendment to this administrative regulation: Since the creation of this regulation, changes to school improvement planning have occurred and a separate professional development plan is no longer collected. Professional development activities are incorporated in the Comprehensive School Improvement Plan (CSIP) or the Comprehensive District Improvement Plan (CDIP). In addition, the No Child Left Behind (NCLB) federal legislation has caused changes to the definitions of professional development and the requirement for teachers to receive "high-quality" professional development.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides an update to the specifics for the type of professional development program that school districts should provide to their instructional and administrative staff, (KRS 156.095(5)). It provides updated guidance as to what constitutes appropriate professional development and the appropriate use of the 4 professional development days required in KRS 158.070(4).

(d) How the amendment will assist in the effective administration of the statutes: It will clarify the requirement for a high-quality professional development program and it will clarify the reporting requirements for professional development plans.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts.

(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: It will allow local school districts to provide better support to their schools by clarifying requirements for professional development experiences and how they are reported. This should allow districts to focus on professional development that addresses the identified needs in their schools and to not be confused by contradictions between requirements for district improvement planning and professional development planning.

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

(a) No cost. The changes are intended to make the professional development process in school districts more efficient.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.

(7) Provide an assessment of whether an 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 these changes to the administrative regulation.

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes hazardous material standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant secretary" means the Commissioner [~~Secretary~~] of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015.

(3) "Employer" is defined in KRS 338.015.

(4) "Standard" is defined in KRS 338.015.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 4 of this administrative regulation as modified by the definitions in Section [~~Sections~~] 1 and requirements in Section 3 of this administrative regulation.

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, means that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities avail-

able for the sale and service of tires, batteries, and accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

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

(a) 29 C.F.R. 1910.101 through 1910.106(a)(2), revised as of July 1, 2004 [2001];

(b) 29 C.F.R. 1910.106(a)(4) through 29 C.F.R. 1910.126 [120], revised as of July 1, 2004 [2001]; and,

(c) The revisions to 29 C.F.R. 1910.103, as published in the June 8, 2004, Federal Register, Volume 69, Number 110 [119 and 29 C.F.R. 1910.120, as published in the November 7, 2002, Federal Register, Volume 67, Number 216].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [Cabinet], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005, at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Kentucky Department of Labor, 1047 U.S. 127 Hwy South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 4, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110, which corrects a technical error in 29 C.F.R. 1910.103. 29 C.F.R. 1910.103 contains requirements for the installation of gaseous hydrogen systems on consumer premises where the hydrogen supply to the consumer premises originates outside the consumer premises and is delivered by mobile equipment. On October 24, 1978, the Occupational Safety and Health Administration (OSHA) revised certain safety and health standards, including Table H-2 in 29 C.F.R. 1910.103. The table contained specifications for the minimum distances used to determine placement of hydrogen systems of indicated capacity located outdoors, in special buildings, or in special rooms to any specified outdoor exposure. Table H-2 was amended by removing line 13 and line 14 because they dealt with public safety and property protection and were not within agency regulatory jurisdiction. However, OSHA omitted a reference to line 14 in Table H-2 (referenced as "Item" 14) found at 29 C.F.R. 1910.103(b)(2)(ii)(c) and it was not removed at that time. The paragraph still contains a cross-reference to the nonexistent item 14. This amendment will remove the cross-reference to the nonexistent item 14 and clarify the requirements. This administrative regulation also corrects a previous incorporation by reference typographical error. Prior amendment incorporated the federal requirements through 29 C.F.R. 1910.120 whereas the incorporation should have been through 29 C.F.R. 1910.126. The requirements have not changed. This amendment simply corrects that error. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal OSHA. Having already adopted OSHA's former 29 C.F.R. 1910.103 standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this technical amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(2) If 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, in Section 4, incorporates by reference the June 8, 2004, Federal Register, Volume 69, Number 110; making a technical revision to 29 C.F.R. 1910.103 for purpose of correcting an incorrect reference in Table H-2. This administrative regulation also corrects a previous incorporation by reference typographical error. Prior amendment incorporated the federal requirements through 29 C.F.R. 1910.120 whereas the incorporation should have been through 29 C.F.R. 1910.126. The requirements have not changed. This amendment simply corrects that error. Finally, this regulation also updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of the amendment to this administrative regulation: Having already adopted OSHA's former 29 C.F.R. 1910.103 standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the technical amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency and provides employers and employees with a clear understanding of the requirements. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative

regulation, if new, or by the change if it is an amendment: The above groups will not be impacted by this administrative regulation as this amendment only corrects an inaccurate reference, typographical error, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. This amendment incorporates a federal revision correcting an inaccurate reference in 29 C.F.R. 1910.103. This administrative regulation also corrects a previous incorporation by reference typographical error and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 4, incorporates by reference a technical amendment published in the June 8, 2004, Federal Register, Volume 69, Number 110, page 31881, correcting an inaccurate reference in 29 C.F.R. 1910.103, Table H-2. This administrative regulation also corrects a previous incorporation by reference typographical error and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 338.051, 338.061, 803 KAR 2:010, 803 KAR 2:050, Pub L. 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-):There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: The purpose of this technical amendment is to ensure consistency and provide employers and employees with a clear understanding of the requirements. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015.

(2) "Employer" is defined in KRS 338.015.

(3) "Established federal standard" is defined in KRS 338.015.

(4) "National consensus standard" is defined in KRS 338.015.

(5) "Standard" is defined in KRS 338.015.

(6) "U.S. Department of Labor" means Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

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

(a) 29 C.F.R. Part 1910.132-138, Subpart I, "Personal Protective Equipment", revised as of July 1, 2004 [2003], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The Revision to 29 C.F.R. 1910.134, "Respiratory Protection" and Appendix A to 29 C.F.R. 1910.134, as published in the August 4, 2004, Federal Register, Volume 69, Number 149 [~~The revocation of 29 C.F.R. Part 1910.139, "Respiratory Protection for M. Tuberculosis", as published in the December 31, 2003, Federal Register, Volume 68, Number 250~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Department of Labor, 1047 U.S. Hwy 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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 Stumbo, Health Standards Specialist, Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This ordinary administrative regulation, in Section 2, incorporates the revision to 29 C.F.R. 1910.134, "Respiratory Protection" and Appendix A to 29 C.F.R. 1910.134, as published in the August 4, 2004, Federal Register, Volume 69, Number 149. The revision provides for the addition of the REDON controlled negative pressure fit-testing protocol for respirators to Appendix A of 29 C.F.R. 1910.134. Several minor changes were also made to 29 C.F.R. 1910.134 to reflect the addition of the REDON protocol. Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004, and updates the administrative regulation to meet KRS 13A requirements.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted 29 C.F.R. 1910.134 and its Appendix A, the Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to revise its standard to include the amendments to 29 C.F.R. 1910.134 and its Appendix A as published in the August 4, 2004, Federal Register, Volume 69, Number 149. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the addition of the REDON protocol.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This ordinary administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection can result from promulgation of this amendment because employers will have an additional protocol to choose from. An added benefit to employers is that the REDON protocol requires less time to complete than existing protocols.

(2) If 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 ordinary administrative regulation, in Section 2, incorporates the revision to 29 C.F.R. 1910.134, "Respiratory Protection" and Appendix A to 29 C.F.R. 1910.134, as published in the August 4, 2004, Federal Register, Volume 69, Number 149. Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004, and updates the administrative regulation to meet KRS 13A requirements.

(b) The necessity of the amendment to this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted 29 C.F.R. 1910.134 and its Appendix A, the Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to revise its standard to include the amendments to 29 C.F.R. 1910.134 and its Appendix A as published in the August 4, 2004, Federal Register, Volume 69, Number 149. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the changes as published in the August 4, 2004, Federal Register, Volume 69, Number 149.

(c) How the amendment conforms to the content of the authorizing statutes: This ordinary administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection can result from promulgation of this amendment because employers will have an additional protocol to choose from. An added benefit to employers is that the REDON protocol requires less time to complete than existing protocols.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all private and public sector employers in the commonwealth who are covered by KRS Chapter 338 and have employees who undergo fit-testing associated with the use of respirators.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendment to this administrative regulation will provide an additional choice to employers as to which fit-testing protocol they will utilize when fit-testing employees for the use of tight fitting respirators. Additionally, the REDON protocol requires less time to perform than existing protocols. Accordingly, employers can realize cost savings should they choose to utilize the REDON protocol, while still providing an approved protocol to assess respirator fit.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Ken-

tucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This revision provides for the addition of the REDON controlled negative pressure fit-testing protocol for tight fitting respirators. The REDON protocol is added to Appendix A of 29 C.F.R. 1910.134. Several minor changes were also made to 29 C.F.R. 1910.134 to reflect the addition of the REDON protocol. Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004, and updates the administrative regulation to meet KRS Chapter 13A requirements.

3. Minimum or uniform standards contained in the federal mandate. This revision provides for the addition of the REDON controlled negative pressure fit-testing protocol for tight fitting respirators. The REDON protocol is added to Appendix A of 29 C.F.R. 1910.134. Several minor changes were also made to 29 C.F.R. 1910.134 to reflect the addition of the REDON protocol. Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004, and updates the administrative regulation to meet KRS Chapter 13A requirements.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This ordinary regulation affects any unit, part, or division of local government having employees who undergo fit-testing associated with the use of tight fitting respirators.

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 amendment will affect all private and public sector employers in the commonwealth who are covered by KRS Chapter 338 and have employees who undergo fit-testing associated with the use of tight fitting respirators.

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 (+/-):
Expenditures (+/-):
Other explanation: There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338[~~.051, 338.061~~], 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes [~~and 338.061 authorize~~] the Kentucky Occupational Safety and Health Standards Board to [~~adopt and~~] promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes machinery and machine guarding standards to be enforced by the Division of Occupational Safety and Health Compliance in [~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of~~] general industry.

Section 1. Definitions [~~Applicable to this Part~~]. (1) [~~"Act" means KRS Chapter 338.~~

~~(2)~~] "Assistant Secretary of Labor" means the Commissioner [~~Secretary~~] of Labor, Commonwealth of Kentucky.

(2) [~~(3)~~] "Employee" is defined in KRS 338.015 [~~means any person employed except those employees excluded in KRS 338.021~~].

(3) [~~(4)~~] "Employer" of defined in KRS 338.015.

(4) [~~means any entity for whom a person is employed except those employers excluded in KRS 338.021.~~

~~(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.~~

~~(6)~~] "National consensus standard" is defined in KRS 338.015 [~~means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization~~].

(5) [~~(7)~~] "Standard" is defined in KRS 338.015 [~~means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".~~

~~(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601~~].

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 5 of this administrative regulation as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation.

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language [~~relating to clutch/brake controls on mechanical power presses with part revolution clutches~~] in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).

(2) [~~29 C.F.R. 1910.217(b)(7)(xii) is amended to read:~~] The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position.

Section 5. [~~3.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.211 through 1910.217(b)(xi), revised as of July 1, 2004;

(b) 29 C.F.R. 1910.217(b)(xiii) through 1910.222, revised as of July 2, 2004;

(c) The revisions to 29 C.F.R. 1910.217 and 1910.219, as published in the June 8, 2004, Volume 69, Number 110 [~~.222, Subpart O, "Machinery and Machine Guarding", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.~~

~~(b) The revision to 29 C.F.R. 1910.215, "Abrasive Wheel Machinery", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(c) The revision to 29 C.F.R. 1910.216, "Mills and Calendars in the Rubber and Plastics Industries", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(d) The revisions to 29 C.F.R. 1910.217, "Mechanical Power Presses", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(e) The revisions to 29 C.F.R. 1910.218, "Forging Machines", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

~~(f) The revision to 29 C.F.R. 1910.219, "Mechanical Power Transmission Apparatus", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(g) The removal of 29 C.F.R. 1910.220, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(h) The removal of 29 C.F.R. 1910.221, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(i) The removal of 29 C.F.R. 1910.222, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor [~~obtained, and copied at: Kentucky Labor Cabinet~~], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601[~~. Office hours are 8 a.m. – 4:30 p.m. (ET)~~], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 5, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110, which corrects technical errors in 29 C.F.R. 1910.217 and .219. On December 3, 1974, the Occupational Safety and Health Administration (OSHA) published in the Federal Register a final rule on Mechanical Power Presses based on a petition to revoke 29 C.F.R. 1910.217(d)(1) and (d)(2). As part of the final rule, a new paragraph (c)(5) was added. The new paragraph contained typographical errors that change the meaning of the paragraph and imply that a Type B gate is a presence-sensing device. This is not the case. A Type B gate is considered a safety device when used with a failsafe control system and a brake monitor as OSHA also stated in the same 1974 Federal Register. In this amendment, correction of the typographical error in 1910.217(c)(5) is achieved by adding a comma after the word "device" and deleting the word "of" before the word "Type." 29 C.F.R. 1910.219 contains requirements for the construction of guards for all types of mechanical power-transmission apparatus. On November 24, 1978, OSHA revoked Tables O-12 and O-13 in 29 C.F.R. 1910.219. These tables contained specifications for materials used in guarding mechanical power-transmission apparatus. They were revoked because they were considered overly-detailed and too restrictive of the kinds of materials used for guards. Further, all references to these 2 tables were also to be removed. However, OSHA neglected to remove 2 references to Table O-12. The first reference to Table O-12 that still appears is found in paragraph (e)(1)(i) of 29 C.F.R. 1910.219. The second reference to Table O-12 is found in paragraph (o)(5)(ii) of 29 C.F.R. 1910.219. This amendment removes the text referring to Table O-12. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal OSHA. Having already adopted OSHA's former 29 C.F.R. 1910.217 and .219 standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this technical amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(2) If 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, in Section 5, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110;

making a technical revision to 29 C.F.R. 1910.217 and .219 for purpose of correcting typographical errors and erroneous references. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of the amendment to this administrative regulation: Having already adopted OSHA's former 29 C.F.R. 1910.217 and .219 standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the technical amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency and provides employers and employees with a clear understanding of the requirements. Improved employee protection is likely to result from promulgation of this amendment, because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will not be impacted by this administrative regulation as this amendment only makes a technical revision to 29 C.F.R. 1910.217 and .219 for purpose of correcting typographical errors and erroneous references, updates this administrative regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18 29 C.F.R. 1952.11.

2. State compliance standards. This amendment makes a technical revision to 29 C.F.R. 1910.217 and .219 for purpose of correcting typographical errors and erroneous references, updates this administrative regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 5, incorporates by reference a technical amendment published in the June 8, 2004, Federal Register, Volume 69, Number 110, page 31882, correcting an typographical errors to 29 C.F.R. 1910.217(c)(5) and erroneous references to
Table O-12 in paragraphs (e)(1)(i) and (o)(5)(ii) of 29 C.F.R. 1910.219. Additionally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 338.051, 338.061, 803 KAR 2:010, 803 KAR 2:050, Pub.L. 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-):There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: The purpose of this technical amendment is to ensure consistency and provide employers and employees with a clear understanding of the requirements. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means the Commissioner of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015.

(3)[~~(2)~~] "Employer" is defined in KRS 338.015.

(4)[~~(3)~~] "Standard" is defined in KRS 338.015.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

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

(a) 29 C.F.R. 1910.261 through 29 C.F.R. 1910.272 and Appendices, revised as of July 1, 2004 [~~2001~~]; and

(b) The revisions to 29 C.F.R. 1910.268, [~~29 C.F.R. 1910.272, and Appendix A to 29 C.F.R. 1910.272,~~] as published in the June 8, 2004 [~~November 7, 2002~~] Federal Register, Volume 69 [~~67~~], Number 110 [~~216~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [~~Cabinet~~], Division of Education and Training, U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Department of Labor, 1047 U.S. Hwy 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 3, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110, which corrects a technical error in 29 C.F.R. 1910.268. On June 18, 1998, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register removing and revising certain standards that were out of date, duplicative, unnecessary, or inconsistent. In that final rule, the Telecommunications Standard, 29 C.F.R. 1910.268, was amended to revise paragraph (f)(1), remove paragraphs (f)(2) through (f)(4), and (f)(7) through (f)(9), and redesignate paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3). However, re-designated paragraph (f)(3) of 29 C.F.R. 1910.268 (former paragraph (f)(6)) has continued to include a cross-reference to former paragraph (f)(5). The 1998 Federal Register notice should have corrected the cross-reference to refer to re-designated paragraph (f)(2) instead of (f)(5). This amendment corrects the cross-reference accordingly. This administrative regulation also updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted OSHA's former 29 C.F.R. 1910.268 standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Occupational Safety and Health Standards Board adopted this technical amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(2) If 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, in Section 3, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110, making a technical revision to 29 C.F.R. 1910.268 correcting an erroneous cross-reference. This amendment also updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of the amendment to this administrative regulation: Having already adopted OSHA's former 29 C.F.R. 1910.268 standard, the Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the technical amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency and

provides employers and employees with a clear understanding of the requirements. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will not be impacted by this administrative regulation as this amendment only makes a technical revision to 29 C.F.R. 1910.268 for purpose of correcting an erroneous cross-reference, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2) 29 C.F.R. 1952.11

2. State compliance standards. This amendment makes a technical revision to 29 C.F.R. 1910.268 for purpose of correcting an erroneous cross-reference, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 3, incorporates by reference a technical amendment published in the June 8, 2004 Federal Register, Volume 69, Number 110, page 31882, correcting an erroneous cross-reference in 29 C.F.R. 1910.268. Additionally, this amendment updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 338.051, 338.061, 803 KAR 2:010, 2:050, Public Law 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: The purpose of this technical amendment is to ensure consistency and provide employers and employees with a clear understanding of the requirements. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:319. Commercial diving operations.

RELATES TO: KRS Chapter 338[~~.051, 338.061~~], 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes [~~and 338.061 authorize~~] the Kentucky Occupational Safety and Health Standards Board to [~~adopt and~~] promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes commercial diving operations standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry [~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry~~].

Section 1. Definitions [~~Applicable to this Part~~]. (1) [~~"Act" means KRS Chapter 338.~~

~~(2)~~] "Assistant Secretary of Labor" means the Commissioner [~~Secretary~~] of Labor, Commonwealth of Kentucky.

(2) [~~(3)~~] "Employee" is defined in KRS 338.015 [~~means any~~

~~person employed except those employees excluded in KRS 338.021~~].

(3) [~~(4)~~] "Employer" is defined in KRS 338.015 [~~means any entity for whom a person is employed except those employers excluded in KRS 338.021~~

~~(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.~~

~~(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization~~].

(4) [~~(7)~~] "Standard" is defined in KRS 338.015 [~~means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".~~

~~(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601~~].

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 4 of this administrative regulation as modified by the definitions in Section 1 and requirements of Section 3 of this administrative regulation.

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Department of Labor, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

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

(a) 29 C.F.R. [~~Part~~] 1910.401-1910.441 and Appendices, revised as of July 1, 2004; [~~, revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are hereby incorporated by reference~~].

(b) The revisions to 29 C.F.R. 1910.401, 1910.402, and Appendix C to Subpart T of Part 1910, as published in the February 17, 2004 Federal Register, Volume 69, Number 31 [~~440, "Record-keeping Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [~~obtained, and copied~~] at the [~~:~~] Kentucky Department of Labor [~~Cabinet~~], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601[~~. Office hours are 8 a.m. - 4:30 p.m. (ET)~~], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Department of Labor, 1047 U.S. Hwy 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 4, incorporates by reference the February 17, 2004 Federal Register, Volume 69, Number 31, which allows employers of recreational diving instructors and diving guides to comply with an optional alternative set of requirements instead of the decompression chamber requirements in the current standard. The purpose of having a decompression chamber available and ready for use at a dive site is to treat decompression sickness (DCS) and arterial gas embolism (AGE). DCS may occur from breathing air or mixed gases at diving depths and durations that require decompression, while AGE may result from overpressurizing the lungs, usually following a rapid ascent to the surface during a dive without proper exhalation. This amendment enables employers to protect their recreational diving instructors and diving guides from the risks of DCS and AGE while using a breathing-gas mixture consisting of a high percentage of O_2 mixed with nitrogen (nitrox) supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained breathing apparatus. Recreational diving instructors and diving guides covered by this amendment will receive a level of safety and health protection that is equivalent to recreational diving instructors and diving guides who have a decompression chamber at the dive site. Therefore, a decompression chamber near the dive site is unnecessary for the divers covered by this amendment. Employers of recreational diving instructors and diving guides who wish to comply with the conditions in this amendment will be able to expand their operations to include nitrox diving because they will not need to purchase and maintain a decompression chamber at the dive site. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the amendment. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal OSHA. Having already adopted OSHA's former commercial diving standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to revise our standard according to the February 17, 2004 final rule. To ensure consistency, provide employers and employees with a clear understanding of the requirements, and provide this compliance option to employers in the commonwealth, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the revision because it is more performance-oriented than the for-

mer regulation. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the revision.

(2) If 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, in Section 4, incorporates by reference the February 17, 2004 Federal Register, Volume 69, Number 31, which allows employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression chamber requirements in the current standard. This amendment enables employers to protect their recreational diving instructors and diving guides from the risks of DCS and AGE while using a breathing-gas mixture consisting of a high percentage of O_2 mixed with nitrogen supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained breathing apparatus. Employers of recreational diving instructors and diving guides who wish to comply with the conditions in this amendment will be able to expand their operations to include nitrox diving because they will not need to purchase and maintain a decompression chamber at the dive site. Employers covered by this amendment are currently covered by the commercial diving standards. This final rule extends an optional alternative procedure to those employers. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the revision. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of the amendment to this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal OSHA. Having already adopted OSHA's former commercial diving standards the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to revise our standard according to the February 17, 2004 final rule. To ensure consistency, provide employers and employees with a clear understanding of the requirements, and provide this compliance option to employers in the commonwealth, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency and provides employers and employees with a clear understanding of the requirements. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. Employers may find it easier to comply with the revision because it is more performance-oriented than the former regulation. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the revision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the revision. This change will have little anticipated impact in Kentucky. The amendment applies to general industry.

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

(a) Initially: There will be no initial cost to implement this regulation. This voluntary compliance option does not impose any expenditure on any employer.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub. L. 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1953.11

2. State compliance standards. This amendment allows employers of recreational diving instructors and diving guides to comply with an optional alternative set of requirements instead of the decompression chamber requirements in the current standard, updates this administrative regulation to meet KRS Chapter 13A considerations and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation, in Section 4, incorporates by reference the February 17, 2004 Federal Register, Volume 69, Number 31, which allows employers of recreational diving instructors and diving guides to comply with an optional alternative set of requirements instead of the decompression chamber requirements in the current standard. Additionally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 338.051, 338.061, 803 KAR 2:010, 2:050, Pub. L. 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-):There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Local governments may find it easier to comply with this revision because it is more performance-oriented than the former regulation. This amendment imposes no additional costs on any public sector entity. This amendment will reduce employers' compliance burden by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions of the amendment. By providing regulatory flexibility to these employers, this amendment may reduce their costs and increase productive time. This amendment will not affect the number of local government employees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:408. Tools - hand and power.

RELATES TO: KRS Chapter 338[~~.051, 338.061~~], 29 C.F.R. 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731 effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes [~~and 338.061 authorize~~] the Kentucky Occupational Safety and Health Standards Board to [~~adopt and~~] promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes hand and power tool standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry [~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction~~].

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015.

(2) "Employer" is defined in KRS 338.015.

(3) "Standard" is defined in KRS 338.015.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

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

(a) 29 C.F.R. 1926.300-.1926.307 revised as of July 1, 2004 [~~1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~].

(b) The revision [~~amendment~~] to 29 C.F.R. 1910.268, as published in the June 8, 2004, Federal Register, Volume 69, Number 110 [~~1926 Subpart I, "Tools-Hand and Power", as published in the Federal Register, Volume 61 Number 146, March 7, 1996.~~

~~(c) The amendment to 29 C.F.R. 1926.300, "General requirements", as published in the Federal Register, Volume 61 Number 146, March 7, 1996.~~

~~(d) The amendment to 29 C.F.R. 1926.304, "Woodworking tools", as published in the Federal Register, Volume 61 Number 146, March 7, 1996~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~and copied at: Kentucky~~] Department of Labor [~~Cabinet~~], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601[~~. Office hours are 8 a.m. - 4:30 p.m. (EST)~~], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman

APPROVED BY AGENCY: January 26, 2005

FILED WITH LRC: February 14, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005 at 11 a.m. (ET) at the Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2005. 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: Chuck Stribling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chuck Stribling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 3, incorporates by reference the June 8, 2004, Federal Register, Volume 69, Number 110, which corrects a technical error in 29 C.F.R. 1926.307. 29 C.F.R. 1926.307 contains requirements for the construction of guards for all types of mechanical power-transmission apparatus. On November 24, 1978, the Occupational Safety and Health Administration (OSHA) revoked certain safety and health standards, including Table O-12 in 29 C.F.R. 1910.219. The table contained specifications for materials used in guarding mechanical power-transmission apparatus. It was revoked because it was considered overly -detailed and too restrictive of the kinds of materials used for guards. Further, all references to the table were also to be removed. However, OSHA neglected to remove 2 references to Table O-12 in 29 C.F.R.

1926.307. The first reference to Table O-12 that still appears is found in paragraph (e)(1)(i) of 29 C.F.R. 1926.307. The second reference to Table O-12 is found in paragraph (o)(5)(ii) of 29 C.F.R. 1926.307. This amendment removes the text referring to Table O-12. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as federal OSHA. Having already adopted OSHA's former 29 C.F.R. 1926.307 standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this technical amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(2) If 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, in Section 3, incorporates by reference the June 8, 2004 Federal Register, Volume 69, Number 110, making a technical revision to 29 C.F.R. 1926.307 for purpose of correcting erroneous references. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

(b) The necessity of the amendment to this administrative regulation: Having already adopted OSHA's former 29 C.F.R. 1926.307 standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA encouraged Kentucky to revise our standard according to the June 8, 2004 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the technical amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency and provides employers and employees with a clear understanding of the requirements. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will not be impacted by this administrative regulation as this amendment only makes a technical revision to 29 C.F.R. 1926.307 for purpose of correcting erroneous references, updates the regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Pub. L. 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. This amendment makes a technical revision to 29 C.F.R. 1926.307 for purpose of correcting erroneous references, updates the regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 3, incorporates by reference a technical amendment published in the June 8, 2004, Federal Register, Volume 69, Number 110, page 31882, correcting erroneous references to Table O-12 in paragraphs (e)(1)(i) and (o)(5)(ii) of 29 C.F.R. 1926.307. Additionally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations, and updates the incorporation by reference of the Code of Federal Regulations to July 1, 2004.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the

administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this administrative regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 338.051, 338.061, 803 KAR 2:010, 2:050, Pub. L. 91-596, the Occupational Safety and Health Act of 1970 - Section 18, and 29 C.F.R. 1952.11 authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-):There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: The purpose of this technical amendment is to ensure consistency and provide employers and employees with a clear understanding of the requirements. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(4), 205.6316(4), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, 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 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) [~~A rated generic product" means a product that the FDA has found to be bioequivalent.~~

~~(2)~~] "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(2) [~~(3)~~] "Department" means the Department for Medicaid Services or its designated agent.

(3) [~~(4)~~] "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) [~~(5)~~] "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(5) [~~(6)~~] "Food and Drug Administration" or "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.

(6) "Gross amount due" means the total price of a drug claimed from all sources.

(7) [~~"Nonsolid dosage form" means a covered drug item other than an oral tablet, oral capsule, or inhaler.~~

~~(8)~~] "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) [~~Except as specified in subsection (4)(e) of this section, reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product.~~] If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:604, the reimbursement to the participating provider [~~for the dispensing fee~~] shall be reduced by the amount of the copayment.

(2) The department [~~shall~~]:

(a) May establish a state maximum-allowable cost for a drug:

1. If two (2) or more multisource drugs with a significant cost difference exist for the given drug; and

2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted to approximate, as closely as possible, the estimated acquisition cost for the lower priced drug. The approximated estimated acquisition cost shall be utilized as the state maximum-allowable cost; and

(b) Shall maintain a current listing of drugs and their corresponding state maximum-allowable costs via a link from the department web site located at the following address:

(c) http://www.chfs.ky.gov/dms.

(3) An appeal of a state maximum-allowable cost price for a drug shall be as follows:

(a)1. The provider shall email or fax a completed "MAC Price Inquiries and Research Request Form" (which is available at the department and at the website address http://kentucky.fhsc.com/providers/documents.asp by clicking on "MAC Price Inquiries and Research Request Form or via the specific website address http://kentucky.fhsc.com/Downloads/providers/KYRx MACResearchRequestForm.pdf) to First Health Services Corporation. The email address is rebate@fhsc.com and the fax number is 804-217-7911; or

2. The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;

(b) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days;

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum-allowable cost price;

(d) The state maximum-allowable cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum-allowable cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in subsection (3)(c) of this section; or

2. The provider is able to document that, despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider; and

(e) When the change in state maximum-allowable cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment. [~~For which a federal upper limit does not exist; and~~

~~2. For which at least one (1) readily and nationally-available A-rated generic product exists;~~

~~(b) Determine a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturer, including both generic and brand name, and multiplying that price by 150 percent. The lowest price for a drug shall be:~~

~~1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and~~

~~2. Determined by reviewing the pricing determinations of AWP, WAC, and direct price for the drug;~~

~~(c) Remove a state maximum-allowable cost for a drug if a federal upper limit becomes available for the drug; and~~

~~(d) Maintain a current listing of drugs and their corresponding~~

~~state maximum-allowable costs at the department web site located at the following address: http://chs.ky.gov/dms.~~

~~(3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of accurate documentation (including recent drug purchase summaries, invoices, or remittance advices) from the provider, the department:~~

~~(a) Shall review the referenced product and its corresponding state maximum allowable cost value to ensure it reflects an accurate market price and availability; and~~

~~(b) May consider adjusting or removing the state maximum-allowable cost for the drug if the department determines that the state maximum-allowable cost does not accurately reflect current market price or conditions.]~~

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List [~~Formulary~~] established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

3. The estimated acquisition cost (EAC) which shall:

a. Through February 14, 2005, equal the AWP minus twelve (12) percent, plus a dispensing fee and, if applicable, a unit dose addition;

b. Effective February 15, 2005, equal the AWP minus sixteen (16) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

c. Effective January 1, 2006, equal the AWP minus seventeen (17) percent, plus a dispensing fee and, if applicable, a unit dose addition;

4. The usual and customary billed charge; or

5. The gross amount due.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. Made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and

2. The lesser of:

a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;

b. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;

c. The estimated acquisition cost (EAC), which shall:

(i) Through February 14, 2005, equal the AWP minus twelve (12) percent, plus a dispensing fee and, if applicable, a unit dose addition;

(ii) Effective February 15, 2005, equal the AWP minus sixteen (16) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

(iii) Effective January 1, 2006, equal the AWP minus seventeen (17) percent, plus a dispensing fee and, if applicable, a unit dose addition;

d. The usual and customary billed charge; or

e. The gross amount due. [~~Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:~~

~~1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;~~

~~2. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate if a federal upper limit is unavailable;~~

~~3. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or~~

~~4. The usual and customary billed charge.~~

~~(d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:~~

~~1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or~~

~~2. The usual and customary billed charge.~~

~~(e)1. Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.~~

~~2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:~~

~~a. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;~~

~~b. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate;~~

~~c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or~~

~~d. The usual and customary billed charge.~~

~~3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:~~

~~a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or~~

~~b. The usual and customary billed charge.~~]

(e) [~~4.~~] If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [~~reimbursement shall not include a dispensing fee~~].

(f) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;

2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or

3. Prior authorization is required by the department and has been denied or has not been requested.

(g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than:

1. Through January 31, 2005:

a. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed;

b. [~~2.~~] Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and

c. [~~3.~~] Four (4) dispensing fees per drug within a calendar month for a nonsolid dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug; and

2. Effective February 1, 2005, one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:

a. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed;

b. The drug is a controlled substance, in which case up to

three (3) additional dispensing fees shall be allowed;

c. The drug is a legend intravenous drug, in which case one (1) additional dispensing fee shall be allowed; or

d. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) For an outpatient service [~~or personal care~~] recipient:

1. Through January 31, 2005, there shall not be more than:

a. [~~1.~~] One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;

b. [~~2.~~] Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

c.(i) [~~3.a.~~] Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or

(ii) [~~b.~~] Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care; and

2. Effective February 1, 2005, a maintenance drug shall be dispensed, if appropriate, up to a ninety-two (92) day supply with only one (1) dispensing fee allowed for a refill of the maintenance drug within the ninety-two (92) day time period.

(j) For a personal care recipient there shall not be more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;

2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or

3.a. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or

b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(k) [~~(j)~~] Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:

1. National Drug Code (NDC); or

2. Generic name, strength, and dosage form.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(7) If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(8) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(9) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(10) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(11)(a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.

(12) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(13)(a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug; and

(b) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall submit [~~bill~~] its usual and customary amount and gross amount due for a drug; and

(b) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (3) of this section and [~~based on the conclusion of the dispensing fee study of the report conducted~~] in accordance with KRS 205.561, the dispensing fee, unless excluded by Section 2(4)(e) of this administrative regulation, shall be four (4) dollars and fifty-one (51) cents per prescription for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of:

1. Through January 31, 2005:

a. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and

b. [~~2.~~] Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist; and

2. Effective February 1, 2005, two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:

(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation; [~~or~~]

(b) The physician's usual and customary amount or gross amount due [~~charge to the general public for the drug~~]; or

c. The federal upper limit.

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

Section 5. Material Incorporated by Reference. (1) The "MAC Price Inquiries and Research Request Form, December 2004 edition," is incorporated by reference.

(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.

JAMES W. HOLSINGER, Jr. M.D., Secretary
SHANNON TURNER, Commissioner
DUANE L. KILTY, Jr., Ph.D., Undersecretary
APPROVED BY AGENCY: January 27, 2005
FILED WITH LRC: January 28, 2005, at 11 a.m.

A public hearing on this administrative regulation shall, if requested, be held on March 21, 2005, at 9:00 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 March 14, 2005, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(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 method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation includes establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing one dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid Services. Currently, DMS is subsidizing the commercial market via high reimbursement to pharmacies for excessively inflated drug ingredient costs and high dispensing fees. This amendment would bring Medicaid more in line with other state Medicaid plans as well as the commercial sector.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; determining a state maximum-allowable cost for a drug by reviewing the pricing sources average wholesale price (AWP), wholesale acquisition cost (WAC), and direct price for the drug and approximating, as closely as possible, the estimated acquisition cost and utilizing that as the state maximum-allowable cost; altering drug reimbursement effective February 15, 2005, from AWP minus 12% to AWP minus 16% and effective January 1, 2006 to AWP minus 17%; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers and drug manufacturers 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: Pharmaceutical providers or manufacturers shall be affected in that effective February 15, 2005, drug reimbursement will change from its current AWP minus 12% to AWP minus 16% and effective January 1, 2006, to AWP minus 17%; that a state maximum-allowable cost may be established for any drug for which 2 or more multisource drugs with a significant cost difference exist; in that the prior meth-

odology for determining a state maximum-allowable cost is being replaced; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill. Long term care pharmaceutical providers will be impacted in that the long term care repackaging fee will be $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist. Providers of maintenance drugs outpatient recipients will be affected in that a maintenance drug shall be dispensed, if appropriate, up to a 92 day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92 day time period. Additionally, this administrative regulation allows one dispensing fee per rolling 24 day period per nursing facility service recipient per drug except for certain circumstances and clarifies that over-the-counter drugs dispensed to nursing facility service recipients shall not be reimbursed via the Medicaid Outpatient Pharmacy Program but rather shall be considered part of nursing facility reimbursement.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $42.5 million annually ($29.66 million federal funds; $12.84 million state funds).

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $42.5 million annually ($29.66 million federal funds; $12.84 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

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 than federal requirements.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Amendment)

907 KAR 1:019. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2); 205.564(10), (13), EO 2004-726 [~~2003-064~~]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004 [~~2003-64, effective December 16, 2003~~], reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

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

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms [~~http://chs.ky.gov/dms~~].

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug list " means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, [~~and~~] drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, [~~or~~] drug categories, or related items and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS

205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(13) [~~"Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018 for a drug that has been designated as a maintenance drug in the department's drug list.~~

~~(14)~~] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

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

(15) [~~(16)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(16) [~~(17)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(17) [~~(18)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(18) [~~(19)~~] "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered.

(19) [~~(20)~~] "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(20) [~~(21)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) [~~(22)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A drug covered through the Outpatient Pharmacy Program shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) The department shall have a drug list which:

(a) Lists:

1. Drugs, [~~and~~] drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) Specifies covered vaccines;

(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(h) May be updated monthly or more frequently by the department; and

(i) Shall be posted on the department's Internet web site.

(3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. A drug if used to promote smoking cessation;

6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

7. An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

8. A barbiturate;

9. A benzodiazepine; or

10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient [~~recipients~~] for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (6) [~~(7)~~] of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Noncontrolled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a

drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; [~~or~~]

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) Effective March 1, 2005, a recipient demonstrates stability on a given maintenance drug, in which case, any subsequent fill of the maintenance drug shall be dispensed in a ninety-two (92) day supply.

(4) [~~Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for maintenance drug dispensing fee exceptions if a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.~~

~~(5)~~] The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient [~~recipients~~] for the department to make payment for the compounded drug or compounded drug category.

(5) [~~(6)~~] An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:

(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or

(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.

(6) [~~(7)~~] If it is determined by the department to be in the best interest of a recipient [~~recipients~~], the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(7) [~~(8)~~] A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient has been restricted.

(8) Effective March 1, 2005, the department shall:

(a) Cover up to three (3) brand name prescriptions per recipient per month unless the department determines that it is in the best interest of the recipient to cover any additional brand name prescription; and

(b) Cover unlimited generic prescriptions per recipient per month in accordance with the requirements and limitations established elsewhere in this administrative regulation.

(9) A refill of a prescription shall not be covered unless at least eighty (80) percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, by mail, express-delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number. A request shall be submitted in accordance with the following:

(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving[~~:~~

~~1. Maintenance drug dispensing fee exceptions; or~~

~~2.~~] exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:

1. Complete a Brand Name Drug Request Form;

2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and

3. Indicate on the Brand Name Drug Request Form.

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) A Brand Name Drug Request Form shall not be required if:

1. It has been determined by the department to be in the best interest of a recipient [~~recipients~~] not to require completion of a Brand Name Drug Request Form; and

2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.

(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:

1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;

2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with subsection (1) of this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and

b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:

a. Submit a prior authorization request to the department's urgent fax number; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) and (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

(a) The prescription;

(b) The nursing facility order sheet; or

(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone or fax to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(6) Prior authorization of drugs for a Medicaid long-term care recipient [~~recipients~~] in a nursing facility [~~nursing facilities~~] shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempted from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient [~~recipients~~] for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's pharmacy director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 9(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position;

2. A request to make a verbal presentation shall be submitted in writing via FAX or e-mail to the department with a copy to the chair of the P&T Committee no later than forty-eight (48) hours in advance of the P&T Committee meeting;

3. An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

4. A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pfd format); or

b. Mailed to the department with a total of eighteen (18) copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person.

(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.

(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.

Section 8. Drug Classes for P&T Committee Review. Following are the drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list:

Narcotics - Long Acting	Nondihydropyridine Calcium Channel Blockers
Narcotics - Short and Intermediate Acting	Lipotropics - Nonstatins
Nonsteroidal Anti-inflammatory Drugs (Traditional NSAIDS)	Lipotropics - Statins
Nonsteroidal Anti-inflammatory - COX II Inhibitors	Platelet Inhibitors
Antifungals - Onychomycosis	Antianxiety - General
Antifungals - Oral	Antidepressants - Other than SSRI's
Antifungals - Topicals or Derm	Antidepressants - SSRI's
Antivirals - Herpes	Antipsychotics - Atypical
Antivirals - Influenza	Drugs for ADD
Cephalosporin First Generation	Insulins
Cephalosporin Second Generation	Oral Hypoglycemics - Alpha Gluconsidase Inhibitors
Cephalosporin Third Generation	Oral Hypoglycemics - Biguanides
Hepatitis C	Oral Hypoglycemics - Meglitinides
Macrolides	Oral Hypoglycemics - Second Generation Sulfonylureas
Quinolones First Generation	Oral Hypoglycemics - Thiazolidineiones
Quinolones Second Generation	Histamine-2 Receptor Antagonists (H2RA)
Quinolones Third Generation	Proton Pump Inhibitors (PPI)
Antihistamines - Second Generation	Nausea Agents (5HT3)
Beta Adrenergics - Short Acting	Glaucoma - Alpha 2 Adrenergics
Beta Adrenergics - Long Acting	Glaucoma - Beta Blockers
Beta Adrenergics for Nebulizers	Glaucoma - Prostaglandin Inhibitors
Inhaled Systemic Glucocorticoids	Glaucoma - Carbonic Anhydrase Inhibitors
Leukotriene Inhibitors	Glaucoma - Miscellaneous
Nasal Steroids	Osteoporosis Agents
ACE Inhibitors	Serotonin Receptor Agents
Angiotensin Receptor Antagonists	
Beta Blockers	
Dihydropyridine Calcium Channel Blockers	

Section 9. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for

processing in accordance with the provisions of KRS Chapter 13B.

Section 10. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, [~~January 30, 2003,~~] edition";

(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, [~~March 3, 2003,~~] edition";

(c) "MAP-012802 PPI and H2 Blocker Request Form, October 18, 2004, [~~March 3, 2004,~~] edition."

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

SHANNON TURNER, Commissioner
DUANE L. KILTY JR., Ph.D., Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary

APPROVED BY AGENCY: January 27, 2005

FILED WITH LRC: January 28, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2005, 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. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: 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 of drugs through the Medicaid Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.

(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 provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative establishes that the Department for Medicaid Services (DMS) shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; clarifies that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program, and clarifies that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period had elapsed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid Program in order to maintain the financial viability of the Department for Medicaid Services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing that DMS shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; by clarifying that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program; and by clarifying that DMS shall not cover a refill of a prescription unless at least 80% percent of the prescription time period had elapsed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing that DMS shall cover up to 3 brand name drug prescriptions per recipient per month unless DMS determines that it is in the best interest of the recipient to cover any additional brand name prescription; that DMS shall cover unlimited generic drug prescriptions per recipient per month in accordance with requirements and limitations established in this administrative regulation; that a maintenance drug shall be dispensing in a 92-day supply if the recipient demonstrates stability on the maintenance drug; by clarifying that over-the-counter drugs provided to Medicaid recipients receiving nursing facility services shall be excluded from coverage via the Outpatient Pharmacy Program; and by clarifying that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period had elapsed.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers 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: Pharmaceutical providers or manufacturers shall be affected in that DMS shall cover up to 3 brand name drug prescriptions per month as opposed to unlimited generic drug prescriptions and that a maintenance drug shall be dispensed in a 92-day supply if the recipient demonstrates stability on the maintenance drug. Additionally this administrative regulation clarifies that reimbursement for over-the-counter drugs provided by nursing facility pharmaceutical providers shall be considered part of nursing facility service reimbursement and shall not be reimbursed via the Medicaid Outpatient Pharmacy Program and that DMS shall not cover a refill of a prescription unless at least 80% of the prescription time period has elapsed.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $108 million annually ($75.38 million federal funds; $32.62 million state funds).

(b) On a continuing basis: DMS estimates that the amendment

to this administrative regulation could reduce expenditures as much as $108 million annually ($75.38 million federal funds; $32.62 million state funds).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 45 C.F.R. Parts 260-265, 8 U.S.C. 1611-1645, 42 U.S.C. 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), (3), 205.2003, 42 U.S.C. 601 et seq, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. KRS Chapter 205 requires the Cabinet for Health and Family Services [~~Families and Children~~] to administer the assistance program, the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive assistance be prescribed by administrative regulations in conformity with 42 U.S.C. 602 and federal regulations. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(3) [~~"Cabinet" means the Cabinet for Health and Family Services [Families and Children~~

~~(4)~~] "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(4) [~~(5)~~] "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(5) "Constant care" means active care for a household member by an individual other than:

(a) The time the household member or individual spends sleeping; or

(b) Time in which the household member is in school unaccompanied by the individual.

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (2) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent.

(9) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(10) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(11) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of relationship) parent of the child.

(12) "Prior labor market attachment" or "PLMA" means the parent has earned not less than $1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 9 of this administrative regulation.

(13) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 et seq.;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to

8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);

(ii) Classification pursuant to clause (ii) or (iii) of 8 U.S.C. 1154(a)(1)(B); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d); or

3. The spouse or unremarried surviving spouse if the marriage fulfils the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph; or

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age; or

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.

(14) "Qualifying parent" means the parent who meets PLMA.

(15) "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(16) "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(17) "Severe form of trafficking" is defined by 22 U.S.C. 7102.

(18) [~~(16)~~] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(19) [~~(17)~~] "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

(20) [~~(18)~~] "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(21) [~~(19)~~] "Work" means participation in a Kentucky Works component pursuant to 921 KAR 2:370, Section 2(2)(c).

Section 2. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(3) [~~(4)~~] of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance, Form PA-33D, "Child's Certification of School Enrollment/Attendance", shall be required for a:

(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) Minor teenage parent pursuant to Section 18(1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to 921 KAR 2:016, Section 1.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) A person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. [~~(c)~~] Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 et seq. from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.

(b) A qualified alien, pursuant to Section 1(13) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(13) of this adminis-

trative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d); or

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United.States. pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.

(d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration, Form PA-14, "Declaration of Citizenship or Alien Status", shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(8) of this administrative regulation.

(2) A specific deprivation factor, under Section 6, 7, 8, or 9 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;

2. Legal separation;

3. Marriage annulment;

4. Desertion of:

a. Thirty (30) days or more if the parent:

(i) Voluntarily leaves; or

(ii) Refuses to accept the child into his home; or

b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist in a case if the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:

1. Was present at the time of application; and

2. Has continued or is expected to last for a period of at least thirty (30) calendar days;

(b) The thirty (30) day period may include a period the claimant is undergoing:

1. Planned diagnostic study; or

2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI;

b. Is age sixty-five (65) or over;

c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;

d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:

(i) Social Security Administration; or

(ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of application date;

i. Is recovering from surgery, illness or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness or

injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness or impairment exists; and

2. The disability, illness or impairment is:

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:

(a) Available printed materials that provide information regarding available employment opportunity shall be researched;

(b) The local Office of Employment and Training [~~Department for Employment Service~~] office shall be contacted regarding accessible employment opportunity within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this section.

(9) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(12) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 1(12) of this administrative regulation by signing a completed Form PA-1C Supplement D, "Qualifying Parent Eligibility" with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for $500 of the $1000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits.

Section 10. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 11 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3) (a)] A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care.

(b) If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

1. [~~(a)~~)] Remain eligible for sixty (60) days from the date the

child is placed in emergency foster care; and

2. [~~(b)If no other eligible child is in the benefit group,~~] Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care if no other eligible child is in the benefit group.

(4) (a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 11 [~~10~~] of 921 KAR 2:016.

Section 11. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) VS-8 "Declaration of Paternity";

(e) VS-8B "Voluntary Acknowledgment";

(f) VS-8C "Three Way Paternity Affidavit"; or

(g) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;

6. Passport;

7. Military record;

8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives [~~receive~~] SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 15. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2:370. [~~The cabinet shall provide Form PA-219, "Kentucky Works Program Fact Sheet" to a K-TAP applicant.~~]

Section 16. Cooperation in Child Support Activities. (1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

(a) Identifying the noncustodial parent or obligor;

(b) Providing information to assist in the:

1. Location of the noncustodial parent or obligor;

2. Enforcement of a child support order; or

3. Review or modification of a child support order;

(c) Establishing paternity, if required;

(d) Establishing, modifying or enforcing a child support order; and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3)(a) The cabinet shall provide written notice, Form CS-333, "Facts About the Child Support Program for K-TAP and Kinship Care Recipients", to the applicant or recipient, regarding the individuals' right to file a good cause claim for refusing to cooperate in a child support activity.

(b) The cabinet shall provide Form CS-333.1, "Facts About the Right to Claim Good Cause", to an applicant or recipient who:

1. Requests additional information regarding the criteria for filing a claim; or

2. Files a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

1. Child; or

2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release him for adoption if:

1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient

shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, "Good Cause Claim/Determination", is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and

2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

1. Obtain permission for the contact; or

2. Enable the applicant or recipient to:

a. Present additional evidence or information so that the contact shall be unnecessary;

b. Withdraw the application for assistance or request discontinuance of K-TAP; or

c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

(a) Document the case;

(b) Determine that good cause:

1. Exists and a support activity cannot be initiated without endangering the:

a. Best interests of the child; or

b. Physical or emotional health of the child or the relative; or

2. Does not exist;

(c) Advise the applicant or recipient in writing, Part II of Form PA-121, "Good Cause Claim/Determination", of the result of the good cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 921 KAR 2:016; and

(b) The cabinet shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent [~~including a married parent~~] under the age of eighteen (18) living with the spouse shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian or appropriate adult relative pursuant to Section 10 of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 10 of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. [~~, who~~] Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 10 of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 et seq., shall not be provided for more than sixty (60) cumulative months to a benefit group, as defined by [~~pursuant to~~] Section 1(2) of 921 KAR 2:016, that includes:

(a) An adult;

(b) A minor teenage parent pursuant to Section 18(8) of this administrative regulation; or

(c) A fugitive or drug felon not eligible pursuant to Section 21 or 22 of this administrative regulation. [~~includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded pursuant to 42 U.S.C. 601 et seq., whether or not consecutive.~~] [~~includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded pursuant to 42 U.S.C. 601 et seq., whether or not consecutive.~~]

(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 23(1)(b) of this administrative regulation;

(b) Has a physical or mental disability, as defined in Section 8(3)(a)2, (b) and (c) of this administrative regulation, as determined by the cabinet. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(2)(c)13 and 4(2); and

2. Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c)1. Is required to provide constant care for at least six (6) hours daily for a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available.

2. During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 16 of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, as determined by the cabinet, who:

1. Has complied with:

a. Kentucky Works requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section 16 of this administrative regulation; and

2. During the extension period, shall:

a. Comply with:

(i) Kentucky Works requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f) 1. Received a domestic violence exemption pursuant to Section 23(2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.

2. During the extension period, the individual shall comply with:

a. [~~1.~~] Child support cooperation requirements pursuant to Section 16 of this administrative regulation; and

b. [~~2.~~] Kentucky Works requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.

(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has been penalized for a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2:016. [~~Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in an approved work activity, if available, pursuant to Section 1(19) of this administrative~~

~~regulation.~~

~~(b) The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 921 KAR 2:370, Section 7, for a period of six (6) cumulative months.~~]

(9) Time limitations shall apply to a:

(a) Sanctioned individual pursuant to 921 KAR 2:016, Section 1(21) [~~(23)~~]; or

(b) Penalized individual pursuant to 921 KAR 2:016, Section 1(19) [~~(20)~~].

Section 20. Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 et seq.;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 et seq.; or

(b) Benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

Section 22. Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and concerns identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often that every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-1C Supplement D, ["]Qualifying Parent Eligibility, edition 6/05 [~~5/00~~]";

(b) "PA-14, ["].Declaration of citizenship or Alien Status, edition 6/05 [~~10/01~~]";

(c) "PA-33D, ["] Child's Certification of School Enrollment/Attendance, edition 6/05 [~~5/00~~]";

(d) "PA-121, ["] Good Cause Claim/Determination, edition 6/05 [~~5/99~~]";

(e) "PA-202TP, ["] Teen Parent Personal Responsibility Plan, edition 6/05 [~~5/00~~]";

(f) "[~~PA-219, "Kentucky Works Program Fact Sheet, edition 11/98";~~

~~(g)~~] CS-333, ["] Facts About the Child Support Program for K-TAP and Kinship Care Recipients, edition 6/05 [~~8/01~~]"; and

(g) [~~(h)~~] CS-333.1, ["] Facts About the Right to Claim Good Cause, edition 6/05 [~~4/99~~]".

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

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE ROBINSON, Commissioner
DUANE L. KILTY, Jr., Ph.D., Undersecretary

APPROVED BY AGENCY: February 8, 2005

FILED WITH LRC: February 9, 2005, at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business March 31, 2005. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 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: Shirley Eldridge, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding technical eligibility for K-TAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements for technical eligibility for K-TAP, the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601 et seq. This administrative regulation sets forth these standards in conformity with

the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes K-TAP technical eligibility requirements. The administrative regulation establishes the technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation in child support activities, minor teenage parent provisions, and time limitations for eligibility for K-TAP benefits.

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

(a) How the amendment will change this administrative regulation: This administrative regulation is being amended to implement the 60-month lifetime limit of receipt of K-TAP assistance on drug and fugitive felons, implements a full-family sanction for failure to cooperate with Kentucky Works at 3 months, allows victims and relatives of victims of a severe form of trafficking eligible for K-TAP assistance, adds a definition of constant care, and adds a definition of recipient.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to align time limits on receipt of K-TAP assistance by drug and fugitive felons to be consistent with recipients who cooperate with Kentucky Works. Implementing a full-family sanction after 3 months of penalty will assist the cabinet with meeting the federal participation rate. The state is required to allow eligibility for victims and relatives of victims of a severe from of trafficking under 22 U.S.C 7105(b). The definition of constant care clarifies the time in which an individual is required to care for a disabled family member to be eligible for an extension in receipt of benefits. The definition of recipient clarifies nonresponsible specified caregivers are required to participate with child support.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601 et seq. by clarifying technical eligibility requirements for K-TAP recipients who are drug or fugitive felons, victims and relatives of victims of a severe form of trafficking, and K-TAP recipients out of compliance with Kentucky Works requirements pursuant to 921 KAR 2:370.

(d) How the amendment will assist in the effective administration of the statutes: KRS 205.300(2) requires the cabinet to prescribe by regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative establishes K-TAP technical requirements of school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation in child support activities, and time limitation for eligibility for K-TAP benefits. These amendments to this administrative regulation clarifies policy for those who may be eligible for K-TAP assistance.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP. As of October 2004, there were 32,075 families receiving K-TAP.

(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: K-TAP families that contain a specified relative who is either a drug or fugitive felon will only be allowed to receive assistance for 5 years in a lifetime. The number of months that a family is sanctioned will be reduced. However, the process prior to discontinuance will not change. The client will still have the opportunity for conciliation and demonstrate cooperation before losing benefits. Nonresponsible specified caregivers will be required to participate with child support activities or receive a 25% reduction in benefits. There should only be a slight impact on K-TAP recipients as a result of this amendment since the current hardship reason established the lifetime limit was only clarified.

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

(a) Initially: The cabinet expects to save an estimated $693,000 in the current fiscal year.

(b) On a continuing basis: The cabinet will save an estimated $538,560 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100% TANF federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There are no increases in fees or funding required with 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 fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 et seq., 22 U.S.C. 7105(b)

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601 et seq.

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. None

JUSTICE AND PUBLIC SAFETY
Department of State Police
Division of Driver's Testing
(New Administrative Regulation)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: 49 U.S.C. 5103a, and 49 C.F.R. Part 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate regulations to reasonably carry out the provisions of KRS 281A.040. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining for the first time a hazardous materials endorsement for a commercial driver's license no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license. This emergency regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" means commercial driver's license as defined in 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.3.

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Desting established solely to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.

(8) "KDOT" means the Kentucky Department of Transportation.

(9) "KSP" means the Kentucky State Police.

(10) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee or refugee status.

(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME Submitted on or After January 31, 2005. (1) An applicant applying for a hazardous materials endorsement on or after January 31, 2005, shall first obtain a CDL prior to requesting a security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a background information sheet containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, their DOT medical card, a completed biographical information sheet and a certified check of $115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the commonwealth of a finding of Determination of No Security Threat, as this term is defined in 49 C.F.R. 1572.3, then the applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(6) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the applicant shall not be issued a HME. The applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(7) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME Submitted On or After May 31, 2005. (1) KYDOT shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the background information sheet containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to their appointment proper identification, their DOT medical card, a completed biographical information sheet and a certified check of $115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the commonwealth may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the renewal applicant shall not be issued a HME. The renewal applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the renewal applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(9) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 4. Transfer Applications For HME Submitted On or After May 31, 2005: (1) In accordance with 49 C.F.R., 1572.13(g), an applicant who applies to transfer an existing HME from another state to the commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to

exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. (1) KSP shall establish eight (8) regional fingerprinting centers in the commonwealth. These centers shall be located in the following cities:

(a) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(b) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(c) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(d) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(e) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(f) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(g) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(h) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application For Hazardous Materials Endorsement" OMB No. 1652-NEW, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK MILLER, Commissioner
STEPHEN B. PENCE, Lt. Governor, Secretary
APPROVED BY AGENCY: January 12, 2005
FILED WITH LRC: January 26, 2005 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, March 24, 2005, at 10 a.m. local time at Kentucky State Police Headquarters, Room 105, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodations, please notify us of your requirement five workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 March 31, 2005. 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: Roger Wright, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6345, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Roger Wright.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements the procedures by which the Kentucky State Police shall collect background information and fingerprints from both initial and renewal applicants for a hazardous materials endorsement for a commercial driver's license. The Federal Department of Homeland Security, Transportation Security Administration, commencing January 31, 2005 for initial applicants and May 31, 2005 for renewal applicants, has mandated a security threat assessment be conducted prior to the issuance or renewal of a hazardous materials endorsement. This regulation further establishes the fee to be charged applicants for collection of the required background information and fingerprints.

(b) The necessity of this administrative regulation: 49 C.F.R. Part 1572, et seq., requires that security threat assessments be conducted on applicants for a hazardous materials endorsement for a commercial driver's license. The Commonwealth of Kentucky, in accordance with the option provided in 49 C.F.R. part 1572.13(f)(1) has elected to collect the applicant background information and fingerprints required for this security threat assessment. This regulation establishes the procedures for the collection of the required information and fingerprints as well as the fee to be charged for this collection service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements the procedures directed by the Transportation Security Administration in 49 C.F.R. Part 1572, et seq., with respect the Commonwealth of Kentucky's obligation to ensure that a hazardous materials endorsement issued to a Kentucky commercial driver's license holder has undergone the federally-mandated security threat assessment which as of January 31, 2005, and May 31, 2005 (for renewal applicants) is prerequisite to the issuance of said endorsement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation implements the procedures for the collection of background information and fingerprints necessary for the Transportation Security Administration to conduct the federally-mandated security threat assessment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation places new obligations on the Kentucky State Police with respect to the issuance of hazardous materials endorsements for a commercial driver's license. This regulation also has an impact on initial and renewal applicants for a hazardous materials endorsements for a commercial driver's license.

(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 State Police will be responsible for collecting security threat assessment background information forms and fingerprints for submission to the Federal Transportation Security Administration and the Federal Bureau of Investigation, respectively. Applicants for hazardous materials endorsement will be required to complete the background form and submit to fingerprinting.

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

(a) Initially: Kentucky State Police estimates that it will cost $489,712 per year to collect applicant background information for submission to the Transportation Security Administration, and to collect and submit fingerprints to the Federal Bureau of Investigation. Based upon on estimated number of 9,000 hazardous materials endorsement applicants per year, the cost per applicant is approximately $114.44.

(b) On a continuing basis: Same as initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fingerprint and background information collection fee to be charged to hazardous materials endorsement applicants in the amount of $115.

(7) Provide an assessment of whether an 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 established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee of $115 to be charged to

hazardous materials endorsement applicants to cover the cost of fingerprinting and collection of applicant background information.

(9) TIERING: Tiering is not applicable to this administrative regulation. 49 C.F.R. Part 1572 mandates that all initial and renewal applicants for hazardous materials endorsement for commercial driver's licenses submit to a security threat assessment involving a fingerprint verified criminal history check and completion of a background information sheet. There is no means by which to apply tiering under these circumstances.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 49 U.S.C. 5103a; 49 C.F.R. Part 1572.

2. State compliance standards: Commencing on January 31, 2005 for initial an applicant for a hazardous materials endorsement for a commercial driver's license and on May 31, 2005, for a renewal applicant for a hazardous materials endorsement for a commercial driver's license, the USA Patriot Act (49 U.S.C. 5103a) requires all such applicants to undergo a security threat assessment conducted by the Federal Transportation Security Administration. 49 C.F.R. Part 1572 sets forth the manner in which the states may elect to collect fingerprints and background information questionnaires from a hazardous materials endorsement applicant for completion of the required security threat assessment.

3. Minimum or uniform standards contained in the federal mandate. All initial applicants for a hazardous materials endorsement must complete the required security threat assessment commencing on January 31, 2005. All renewal applicants for a hazardous materials endorsement must complete the required security threat assessment commencing on May 31, 2005.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 7, 2005

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 7, 2005, at noon, in Room 129 of the Capitol Annex. Representative Tanya Pullin called the meeting to order, and the roll call was taken. The minutes of the January 11, 2005 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair, Senator Richard Roeding, Co-Chair, Senators Joey Pendleton, Gary Tapp, and Representative Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Jenifer Harrison, and Emily Harkenrider.

Guests: Diana Barber, Tim Phelps; Kentucky Higher Education Assistant Authority; Henry S. Davis, John Parrish, Sheila A. Schuster, Board of Examiners of Psychology; Larry Disney, Jim Grawe, Real Estate Appraisers Board; Jenny Jones, Pamela Luce, Department of Veteran's Affairs; Tom Bennett, Department of Fish and Wildlife; Sean Alteri, Diana Andrews, Lana Brewer; Division of Air Quality; Shirley Eldridge, Jason Moseley, Mike Robinson, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Monday, February 7, 2005, and submits this report:

Administrative regulations reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Authority

11 KAR 5:033. KTG student eligibility requirements. Diana Barber, Assistant General Counsel, and Tim Phelps, Student Aid Branch Manager, represented the Authority.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 correct a cross-reference. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 5:034. CAP Grant student eligibility.

A motion was made and seconded to approve the following amendments: to amend Section 1 to add a cross-reference and statutory citations for the federal law. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 5:140. KTG Award determination procedure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 5:160. Disbursement procedures.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 8:030. Teacher scholarships.

In response to questions by Senator Tapp, Ms. Barber stated that the teacher scholarship program was established with a twelve percent interest rate originally. At the time, twelve percent was a reasonable rate to charge for loans. Now that the interest rates have dropped, the interest rates for the teacher scholarship and osteopathic loan programs were being reduced to six percent.

A motion was made and seconded to approve the following amendments: to amend Section 6 to specify the interest rate prior to April 1, 2005. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

A motion was made and seconded to approve the following amendments: to amend Section 4 to specify the interest rate prior to April 1, 2005. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board and Commissions: Board of Examiners of Psychology

201 KAR 26:145. Code of conduct. John Parrish, Director, Dr. Henry Davis, Chair, and Dr. Sheila Schuster, Kentucky Psychology Association, represented the Board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

201 KAR 26:165. Inactive status.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct minor drafting errors to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:171. Requirements for supervision.

201 KAR 26:175. Continuing education.

In response to a question by Senator Tapp, Dr. Davis stated that this administrative regulation increased provider fees for agencies providing continuing education from $50 to $250 but did not increase the $50 cost for individuals attending a continuing education program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to make a technical correction; and (2) to amend Section 7 to: (a) make a distinction between CE hours received through home study or the internet and those received via videoconferencing; and (b) increase the hours that can be received from videoconferencing from six (6) to twelve (12). Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

201 KAR 26:190. Requirements for supervised professional experience.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:230. Examinations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board

201 KAR 30:040. Standards of practice. Larry Disney, Executive Director, and Jim Grawe, Assistant Attorney General, represented the Board.

In response to questions by Senator Tapp, Mr. Disney stated that the standard for measuring square feet had not changed but the recently updated publication clarified examples at the request

of the real estate and building communities.

A motion was made and seconded to approve the following amendments: to amend Section 2 to delete language establishing a variance of up to five percent that did not comply with the national standard incorporated by reference and that did not provide the specificity required by KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Governor: Department of Veteran's Affairs

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund. Pamela Luce, Executive Staff Advisor, and Jenny Jones, Staff Attorney, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add the term "Honorably separated veteran" and place the definitions in alphabetical order; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:221 & E. Waterfowl seasons and limits. Tom Bennett, Commissioner, represented the Department.

301 KAR 2:222 & E. Waterfowl hunting requirements.

In response to questions by Co-Chair Pullin, Commissioner Bennett stated that the South Shore WMA was land that previously belonged to a private citizen who permitted private hunting on his land. This administrative regulation opened the South Shore WMA for waterfowl hunting.

301 KAR 2:223 & E. Waterfowl reporting requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Division for Air Quality: New Source Standards

401 KAR 59:760 & E. Commercial motor vehicle and mobile equipment refinishing operations. Diana Andrews, Assistant Director, and Lana Brewer, Branch Manager, represented the Division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add statutory citations; and (2) to amend Sections 2, 3, 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Policy Development: Child Support

921 KAR 1:410. Child support collection and enforcement. Mike Robinson, Commissioner, and Jason Moseley, Director, represented the Department.

In response to a question by Senator Tapp, Commissioner Robinson stated that the Department had split the child support administrative regulation into two separate administrative regulations. The changes did not affect the actual collections process.

A motion was made and seconded to approve the following amendments: (1) to delete Section 5 because the overpayment return procedures will be inserted into 921 KAR 1:420; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:420. Child support distribution.

A motion was made and seconded to approve the following amendments: (1) to add Section 7 which contains procedures for the return of an overpayment previously included in 921 KAR 1:410; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Natural Resources: 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

405 KAR 24:001. Definitions for 405 KAR Chapter 24.

Division of Waste Management: Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:060E. Financial responsibility account.

The subcommittee adjourned at 12:38 a.m., until March 2005.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

Interim Joint Committee on Health and Welfare
Meeting of January 19, 2005

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of January 14, 2005, having been referred to the Committee on December 22, 2004, pursuant to KRS 13A.290(6):

201 KAR 22:020
201 KAR 22:091
911 KAR 2:110 & E
911 KAR 2:120 & E
911 KAR 2:130 & E
911 KAR 2:150 & E
921 KAR 2:016

The following administrative reguoation was approved as amended at the Committee meeting pursuant to KRS 13A.320:
911 KAR 2:110 & E

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 14, 2005 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates ..... I - 2

The Locator Index lists all administrative regulations published in VOLUME 31 of the Administrative Register from July, 2004 through June, 2005. 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 30 are those administrative regulations that were originally published in VOLUME 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

KRS Index ..... I - 12

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 31 of the Administrative Register.

Subject Index ..... I - 22

The Subject Index is a general index of administrative regulations published in VOLUME 31 of the Administrative Register, and is mainly broken down by agency.

Regulation Number	30 Ky.R. Page No.	Effective Date

VOLUME 30

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

200 KAR 2:006E	2256	3-17-04
Withdrawn		6-15-04
200 KAR 5:370E	2130	2-17-04
Died*		5-24-04
201 KAR 42:020E	2132	3-15-04
Replaced		(See 31 Ky.R.)
201 KAR 42:035E	2260	3-17-04
Replaced		(See 31 Ky.R.)
405 KAR 5:002E	2261	3-16-04
Replaced	2421	8-26-04
405 KAR 5:032E	2265	3-16-04
Replaced	2424	8-26-04
405 KAR 5:036E	2271	3-16-04
Replaced	2430	8-26-04
405 KAR 5:042E	2272	3-16-04
Replaced	2431	8-26-04
405 KAR 5:048E	2274	3-16-04
Replaced	2433	8-26-04
405 KAR 5:062E	2275	3-16-04
Replaced	2434	8-26-04
405 KAR 5:078E	2278	3-16-04
Replaced	2437	8-26-04
405 KAR 5:082E	2280	3-16-04
Replaced	2438	8-26-04
815 KAR 35:050E	2002	2-4-04
Replaced	2308	5-24-04
907 KAR 1:019E	2281	4-5-04
Replaced	2405	8-26-04
907 KAR 1:022E	2004	1-30-04
Withdrawn		7-15-04
922 KAR 2:160E	2449	5-7-04
Replaced		(See 31 Ky.R.)

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:034		
Amended	2311	(See 31 Ky.R.)
11 KAR 18:010	1698	
Amended	2312	(See 31 Ky.R.)
16 KAR 2:010		
Amended	2315	(See 31 Ky.R.)
16 KAR 4:020		
Amended	2319	(See 31 Ky.R.)
16 KAR 6:010		
Amended	2321	(See 31 Ky.R.)
16 KAR 8:030		
Amended	2326	(See 31 Ky.R.)
31 KAR 3:010		
Amended	2171	
As Amended	2455	7-2-04
200 KAR 2:006		
Amended	2328	
Withdrawn		6-15-04
200 KAR 3:045		
Amended	2172	7-2-04
200 KAR 5:360	2241	
Died*		5-24-04
200 KAR 5:370	2242	
Died*		5-24-04
200 KAR 5:380	2584	(See 31 Ky.R.)
201 KAR 12:200		
Amended	2332	
201 KAR 1:040		
Repealed	2414	8-6-04
201 KAR 1:041	2414	8-6-04
201 KAR 1:045		
Repealed	2414	8-6-04
201 KAR 1:130		
Repealed	2414	8-6-04
201 KAR 12:250	2414	(See 31 Ky.R.)
201 KAR 12:260	2415	(See 31 Ky.R.)
201 KAR 15:120	2118	
Amended	2487	8-6-04
201 KAR 16:015		
Amended	2097	
As Amended	2288	5-24-04
201 KAR 16:050		
Amended	2098	
As Amended	2288	5-24-04
201 KAR 18:180		
Amended	2543	(See 31 Ky.R.)
201 KAR 19:315		
Amended	2099	5-24-04
201 KAR 20:056		
Amended	2544	(See 31 Ky.R.)
201 KAR 20:095		
Amended	2546	(See 31 Ky.R.)
201 KAR 20:215		
Amended	2100	
As Amended	2289	5-24-04
201 KAR 20:225		
Amended	2547	(See 31 Ky.R.)
201 KAR 20:490	2585	(See 31 Ky.R.)
201 KAR 28:130		
Amended	2173	6-16-04
201 KAR 42:020	2245	(See 31 Ky.R.)
201 KAR 42:035	2417	(See 31 Ky.R.)
301 KAR 1:058		
Amended	2548	(See 31 Ky.R.)
301 KAR 1:130		
Amended	2334	7-14-04
301 KAR 1:171		
Amended	2335	(See 31 Ky.R.)
301 KAR 1:201		
Amended	2550	8-26-04
301 KAR 1:400		
Amended	2337	7-14-04
301 KAR 2:049		
Amended	2338	7-14-04
301 KAR 2:081		
Amended	2340	7-14-04
301 KAR 2:111		
Amended	2554	8-26-04
301 KAR 2:132		
Amended	2555	(See 31 Ky.R.)
301 KAR 2:144		
Amended	2558	8-26-04
301 KAR 2:172		
Amended	2559	(See 31 Ky.R.)

Regulation Number	30 Ky.R. Page No.	Effective Date
301 KAR 2:174		
Amended	2561	8-26-04
301 KAR 2:178		
Amended	2562	(See 31 Ky.R.)
301 KAR 2:179		
Amended	2567	8-26-04
301 KAR 3:010		
Amended	2568	(See 31 Ky.R.)
301 KAR 3:022		
Amended	2570	(See 31 Ky.R.)
301 KAR 3:029	2418	7-14-04
301 KAR 4:100		
Amended	2572	(See 31 Ky.R.)
301 KAR 4:200		
Amended	2574	(See 31 Ky.R.)
301 KAR 5:010		
Amended	2343	7-14-04
301 KAR 5:020		
Amended	2345	(See 31 Ky.R.)
301 KAR 5:030		
Amended	2347	7-14-04
301 KAR 5:050		
Amended	2349	7-14-04
401 KAR 5:002		
Amended	997	9-8-04
401 KAR 5:026		
Amended	1010	
Amended	1791	(See 31 Ky.R.)
401 KAR 5:029		
Amended	1021	(See 31 Ky.R.)
401 KAR 5:030		
Amended	1024	
Amended	1801	(See 31 Ky.R.)
401 KAR 5:031		
Amended	1035	
Amended	1813	9-8-04
401 KAR 49:011		
Amended	2350	(See 31 Ky.R.)
401 KAR 49:080	2419	(See 31 Ky.R.)
401 KAR 51:001		
Amended	2176	
Amended	2487	(See 31 Ky.R.)
401 KAR 51:017		
Amended	2188	
Amended	2500	(See 31 Ky.R.)
401 KAR 51:052		
Amended	2209	
Amended	2520	7-14-04
405 KAR 5:002	2421	8-26-04
405 KAR 5:032	2424	8-26-04
405 KAR 5:036	2430	8-26-04
405 KAR 5:042	2431	8-26-04
405 KAR 5:048	2433	8-26-04
405 KAR 5:062	2434	8-26-04
405 KAR 5:078	2437	8-26-04
405 KAR 5:082	2438	8-26-04
405 KAR 7:001		
Amended	1045	
405 KAR 8:001		
Amended	1050	
405 KAR 10:001		
Amended	1057	
405 KAR 12:001		
Amended	1060	
405 KAR 16:001		
Amended	1063	
405 KAR 18:001		
Amended	1069	
405 KAR 20:001		
Amended	1075	
405 KAR 24:001		
Amended	1079	
500 KAR 8:020		
Amended	2102	
As Amended	2290	5-24-04
500 KAR 8:030		
Amended	2103	
As Amended	2291	5-24-04
501 KAR 6:020		
As Amended	25	7-17-03
Amended	2105	
As Amended	2292	5-24-04
501 KAR 6:040		
Amended	2225	
As Amended	2456	7-2-04
501 KAR 6:090		
Amended	2226	
As Amended	2456	7-2-04
501 KAR 6:999		
Amended	2107	5-24-04
502 KAR 5:010		
Repealed	2246	7-2-04
502 KAR 5:011	2246	7-2-04
502 KAR 15:010		
Amended	2228	
As Amended	2457	7-2-04
502 KAR 30:060		
Amended	2229	
As Amended	2458	7-2-04
502 KAR 45:025		
Amended	2231	(See 31 Ky.R.)
502 KAR 45:055		
Amended	2109	
As Amended	2293	5-24-04
502 KAR 45:115		
Amended	2232	7-2-04
503 KAR 1:120		
Amended	2576	8-26-04
503 KAR 1:140		
Amended	2352	(See 31 Ky.R.)
503 KAR 1:160		
Amended	2357	8-6-04
503 KAR 3:010		
Amended	2360	(See 31 Ky.R.)
503 KAR 3:020		
Amended	2364	(See 31 Ky.R.)
503 KAR 3:040		
Amended	2368	(See 31 Ky.R.)
503 KAR 3:100		
Amended	2372	8-6-04
505 KAR 1:100		
Amended	2377	
Withdrawn		6-15-04
600 KAR 4:010		
Amended	2233	
As Amended	2459	6-21-04
600 KAR 4:020		
Repealed	2246	6-21-04
600 KAR 4:021	2246	6-21-04
605 KAR 1:060	2247	
As Amended	2465	7-7-04
702 KAR 7:065		
Amended	2378	(See 31 Ky.R.)
702 KAR 7:125		
Amended	2380	(See 31 Ky.R.)
704 KAR 3:401		
Repealed	2119	5-24-04
704 KAR 3:402	2119	5-24-04
808 KAR 12:065	1893	5-24-04
815 KAR 7:125		
Amended	2384	
815 KAR 10:060		
Amended	2385	(See 31 Ky.R.)
815 KAR 20:020		

Regulation Number	30 Ky.R. Page No.	Effective Date
Amended	2390	(See 31 Ky.R.)
815 KAR 20:090		
Amended	2393	(See 31 Ky.R.)
815 KAR 20:110		
Amended	2397	(See 31 Ky.R.)
815 KAR 20:191		
Amended	2398	(See 31 Ky.R.)
815 KAR 20:195		
Amended	2404	(See 31 Ky.R.)
815 KAR 35:050	2119	
As Amended	2308	5-24-04
902 KAR 2:055	1990	
As Amended	2309	5-24-04
907 KAR 1:019		
Amended	2405	(See 31 Ky.R.)
907 KAR 1:022		
Amended	2110	
Amended	2537	
Withdrawn		7-15-04
921 KAR 2:500		
Amended	2411	(See 31 Ky.R.)
922 KAR 1:050		
Amended	1659	
Amended	2066	
As Amended	2466	6-16-04
922 KAR 1:310		
Amended	1662	
Amended	2069	(See 31 Ky.R.)
922 KAR 1:320		
Amended	1679	
As Amended	2468	6-16-04
922 KAR 1:330		
Amended	1682	
As Amended	2471	6-16-04
922 KAR 1:350		
Amended	1688	
Amended	2086	
As Amended	2476	6-16-04
922 KAR 1:480	1718	
As Amended	2485	6-16-04
922 KAR 1:510	2587	(See 31 Ky.R.)
922 KAR 2:160		
Amended	2578	(See 31 Ky.R.)
922 KAR 2:240	2588	
Withdrawn		5-28-04
922 KAR 3:020		
Amended	1987	5-24-04

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

12 KAR 6:011E	4	5-20-04
Expired		12-18-04
31 KAR 4:140E	907	9-23-04
Replaced	1232	1-21-05
105 KAR 1:020E	246	7-13-04
Replaced	380	11-5-04
105 KAR 1:140E	248	7-13-04
Replaced	699	11-5-04
105 KAR 1:200E	250	7-13-04
Replaced	700	11-5-04
105 KAR 1:210E	252	7-13-04
Replaced	386	11-5-04
105 KAR 1:220E	256	7-13-04
Replaced	389	11-5-04
105 KAR 1:240E	258	7-13-04
Replaced	391	11-5-04
105 KAR 1:310E	259	7-13-04
Replaced	393	11-5-04
105 KAR 1:330E	261	7-13-04
Replaced	395	11-5-04
200 KAR 2:006E	5	6-15-04
Replaced	927	11-22-04
200 KAR 5:021E	9	6-15-04
Replaced	702	11-5-04
200 KAR 15:010E	527	7-26-04
Replaced	1053	1-4-05
200 KAR 24:010E	916	9-30-04
200 KAR 38:020E	917	9-30-04
Replaced	1031	1-21-05
200 KAR 38:030E	918	9-30-04
Replaced	1235	1-21-05
200 KAR 38:040E	919	9-30-04
Replaced	1033	1-21-05
201 KAR 22:045E	1382	1-14-05
201 KAR 22:070E	1383	1-14-05
201 KAR 42:020E		
Replaced	30	8-6-04
201 KAR 42:035E		
Replaced	31	8-6-04
301 KAR 2:132E	687	9-15-04
Replaced	1075	1-4-05
301 KAR 2:221E	1220	11-23-04
301 KAR 2:222E	1222	11-23-04
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302 KAR 20:115E	10	6-15-04
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401 KAR 59:760E	1046	11-15-04
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502 KAR 10:120E	***	6-22-04
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803 KAR 2:308E	11	6-15-04
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806 KAR 17:180E	267	7-15-04
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806 KAR 17:280E	269	7-15-04
Replaced	707	11-5-04
806 KAR 17:290E	273	7-15-04
806 KAR 17:300E	278	7-15-04
Replaced	711	11-5-04
806 KAR 17:490E	13	6-15-04
Replaced	569	9-15-04
807 KAR 5:120E	279	7-13-04
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815 KAR 35:060E	14	6-15-04
Replaced	569	9-15-04
815 KAR 35:070E	281	7-8-04
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900 KAR 5:020E	16	6-15-04
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907 KAR 1:018E	1228	12-3-04
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Resubmitted	1492	1-28-05
907 KAR 1:019E	1497	1-28-05
907 KAR 1:022E	292	7-15-04
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907 KAR 1:025E	1385	12-30-04
907 KAR 1:045E	298	7-2-04
Replaced	717	11-5-04
907 KAR 1:065E	300	7-15-04
Replaced	1262	1-21-05
907 KAR 1:155E	306	7-2-04
Replaced	718	11-5-04
907 KAR 1:479E	537	7-30-04
Replaced	1188	1-21-05
907 KAR 3:010E	542	7-30-04
Replaced	646	1-4-05
908 KAR 3:050E	309	7-2-04
Replaced	729	10-19-04
911 KAR 2:110E	310	6-30-04
Replaced	1267	1-19-05
911 KAR 2:120E	314	6-30-04
Replaced	1270	1-19-05
911 KAR 2:130E	320	6-30-04
Replaced		1-19-05
911 KAR 2:140E	325	7-2-04
911 KAR 2:150E	328	6-30-04
Replaced	1280	1-19-05
911 KAR 2:200E	330	6-30-04
921 KAR 2:015	1390	12-30-04
922 KAR 1:360E	691	9-15-04
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11 KAR 4:071	650	11-8-04
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11 KAR 14:060		
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11 KAR 16:001		
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11 KAR 17:010		
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16 KAR 6:010		
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40 KAR 8:010	888	
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45 KAR 1:030		
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45 KAR 1:040		
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200 KAR 5:380		
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200 KAR 15:010		
Amended	610	
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200 KAR 18:021	651	11-10-04
200 KAR 24:020		
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201 KAR 22:020		
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301 KAR 2:223		
Amended	1352	
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302 KAR 5:050		
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Definitions; 401 KAR 8:010
Disinfection, filtration, recycling; 401 KAR 8:150
General provisions, public, semipublic; 401 KAR 8:020
Lead and copper; 401 KAR 8:300
Public notification; 401 KAR 8:070
Repealer; 401 KAR 8:441

WEATHERIZATION
(See Community Based Services: Energy Assistance Program/Weatherization)

WELFARE, CHILD
(See Community Based Services: Protection and Permanency)

WELFARE TO WORK
(See Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation)

WILDLIFE
(See Fish and Wildlife Resources)

WORK STUDY PROGRAM
(See Higher Education Assistance Authority)