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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet Thursday, May 11, 2006 at 10 a.m., in
Room 149 of the Capitol Annex Building, Frankfort, Kentucky.
See tentative agenda on pages 1971-1973 of this Administrative
Register.
VOLUME 32, NUMBER 11 – MAY 1, 2006

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 11, 2006 at 10 a.m. in Room 149, Capitol Annex

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

General Administration
103 KAR 13:04 & E. Waiver of penalties. (E* expires 8/9/2006)

Income Tax; General Administration
103 KAR 16:020 & E. Election to pay share of tax on behalf of corporation. (E* expires 7/31/2006)
103 KAR 15:100 & E. Nonrefundable and refundable corporation income tax credits. (E* expires 8/9/2006)
103 KAR 15:140 & E. Biodiesel tax credit. (E* expires 7/31/2006) (Deferred from April)

Income Tax; Corporations
103 KAR 16:020 & E. Qualified exempt organization under KRS 141.040(8a). (E* expires 8/9/2006)
103 KAR 16:060 & E. Income classification; business and nonbusiness. (E* expires 7/31/2006)
103 KAR 16:090 & E. Apportionment; payroll factor. (E* expires 8/9/2006)
103 KAR 16:200 & E. Consolidated Kentucky corporation income tax return. (E* expires 8/2/2006)
103 KAR 16:210 & E. Calculation of gross income for corporations that are pass-through entities and treatment of certain deductions for their individual members, partners, and shareholders. (E* expires 8/9/2006)
103 KAR 16:240 & E. Nexus standard for corporations and general partnerships. (E* expires 7/31/2006)
103 KAR 16:270 & E. Apportionment; sales factor. (E* expires 9/9/2006)
103 KAR 16:290 & E. Apportionment; property factor. (E* expires 8/9/2006)
103 KAR 16:300 & E. Calculation of taxable net income for disregarded single member LLCs. (E* expires 8/9/2006)

Income Tax; Withholding
103 KAR 16:070 & E. Supplemental wages and other payments subject to withholding. (E* expires 7/31/2006) (Deferred from April)
103 KAR 16:160 & E. Partnership income, credits, and payments subject to withholding. (E* expires 8/2/2006)

OFFICE OF THE GOVERNOR
Kentucky Infrastructure Authority

Authority
200 KAR 17.050. Clean Water State Revolving Fund. (Amended After Comments) (Deferred from April)
200 KAR 17.070. Drinking Water State Revolving Fund. (Amended After Comments) (Deferred from April)

GENERAL GOVERNMENT CABINET

Real Estate Commission
201 KAR 11:011 & E. Definitions for 201 KAR Chapter 11. (E* expires 8/5/2006) (Deferred from April)
201 KAR 11:121 & E. Improper conduct. (E* expires 8/5/2006) (Deferred from April)

Board of Nursing
201 KAR 20:070. Licensure by examination.
201 KAR 20:110. Licensure by endorsement.
201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Board of Chiropractic Examiners
201 KAR 21:015. Code of ethical conduct. (Deferred from April)
201 KAR 21:025. Board; officers, duties. (Deferred from April)
201 KAR 21:031. Board meetings. (Deferred from April)
201 KAR 21:041. Licensing; renewals, fees. (Deferred from April)
201 KAR 21:045. Specialties. (Deferred from April)
201 KAR 21:051. Board hearings; complaints. (Deferred from April)
201 KAR 21:055. Colleges and universities; accreditation, approval. (Deferred from April)
201 KAR 21:060. Clinics; offices. (Deferred from April)
201 KAR 21:065. Professional advertising. (Deferred from April)
201 KAR 21:070. Licensing examination requirements. (Deferred from April)
201 KAR 21:075. Peer review procedures and fees. (Deferred from April)
201 KAR 21:080. Seventy-two (72) hour right of rescission. (Deferred from April)
201 KAR 21:085. Preceptorship program.
201 KAR 21:090. Licensure and registration of persons performing peer review. (Deferred from April)
201 KAR 21:100. Minimum standards for recordkeeping/verified statements. (Deferred from April)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection

Kentucky Boxing and Wrestling Authority
201 KAR 27.005. Definitions for 201 KAR Chapter 27.
201 KAR 27:007. Powers and duties delegated to an executive director, inspector, or employee of the authority.
201 KAR 27:008. License fees and applications for boxing, kickboxing, mixed martial arts event, and elimination event officials.
201 KAR 27:011. General requirements for boxing and kickboxing shows.
201 KAR 27:012. Wrestling show requirements.
201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.
201 KAR 27:017. Requirements for elimination events.
201 KAR 27:020. Tickets.

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201 KAR 27:035. Seconds.
201 KAR 27:040. Managers.
201 KAR 27:060. Referees.
201 KAR 27:070. Timekeeper.
201 KAR 27:090. Trainers.

COMMERCE CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:142. Spring wild turkey hunting

Wildlife
301 KAR 4:050. Swan Lake Unit of Boatright Wildlife Management Area restrictions

Department of Parks

Parks and Campgrounds
304 KAR 1:040. Campgrounds.
304 KAR 1:060. Boat ramp fees. (Deferred from April)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training

General Training Provision
503 KAR 3:050 & E. Telecommunications academy; graduation requirements; records. (*E* expires 7/11/2006) (Deferred from March)

Department of Juvenile Justice
Division of Admissions

Child Welfare
505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: admissions. (Hearing/Written Comments)

EDUCATION CABINET
Board of Education
Department of Education

Office of Instruction
704 KAR 3:305. Minimum requirements for high school graduation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor

Office of Occupational Safety and Health
803 KAR 2:180. Recordkeeping; reporting; statistics. (Not Amended After Comments) (Deferred from April)

Kentucky Horse Racing Authority

Thoroughbred Racing
810 KAR 1:070 & E. Kentucky Thoroughbred Breeders' Incentive Fund. (Written Comments Received)(*E* expires 7/27/2006)
810 KAR 1:080. International wagering hubs.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need

State Health Plan
900 KAR 5:020 & E. State health plan for facilities and services. (*E* expires 7/30/2006)

Division of Adult and Child Health Improvement

Maternal and Child Health
902 KAR 4:030 & E. Newborn Screening Program. (*E* Expires 7/17/2006) (Hearing/Written Comments)
Department of Public Health

Controlled Substances

Department for Medicaid Services

Medicaid Services
907 KAR 1:044. Community mental health services.
907 KAR 1:715 & E. School-based health services. (*E* expires 1/20/2006)(Amended After Comments)

Payments and Services

Department for Mental Health and Mental Retardation Services

Institutional Care
908 KAR 3:190 & E. Drug testing policies at a state operated facility for persons with mental illness or mental retardation. (*E* expires 8/7/2006) (Deferred from January)

Department for Community Based Services

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

Food Stamp Program
921 KAR 3:050. Claims and additional administrative provisions.
921 KAR 3:070. Fair hearings.
Child Welfare
Day Care
922 KAR 2:240. Kentucky early care and education trainer's credential and training approval.
Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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.
VOLUME 32, NUMBER 11 – MAY 1, 2006

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, APRIL 14, 2006

(NOTE: Emergency administrative regulations expire 180 days from the date of filing, or upon replacement, repeal, or withdrawal.)

STATEMENT OF EMERGENCY
31 KAR 4:160E

This emergency amendment is necessary in response to the changes made to KRS 39A.100(1)(k) by HB 135 2006 GA and signed by the Governor on March 8, 2006. The State Board of Elections is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS 39A.100(1)(k) and 117.015(1)(b) to establish procedures for election officials to follow if an election is suspended or delayed by an executive order issued by the Governor. This emergency amendment changes the administrative regulation to conform to the revisions of KRS 39A.100(1)(k) changing the "affected election district" to the "affected election area." This emergency amendment allows the Governor, working with the Secretary of State, the flexibility to determine what election areas are affected by an emergency rather than be limited by predetermined election districts. This emergency amendment must be placed into effect immediately to apply to any emergencies that may occur affecting the May primary election. An ordinary administrative regulation is not sufficient, because it will not be effective prior to the May primary election. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
TREY GRAYSON, Chairman

STATE BOARD OF ELECTIONS
(Emergency Amendment)


RELATES TO: KRS 39A.100, 117.045, 117.065, 117.085, 117.155, 117.187, 117.285, Chapter 424

STATUTORY AUTHORITY: KRS 39A.100(1)(k), 117.015(1)(b)

EFFECTIVE: April 14, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(b) requires the State Board of Elections to promulgate administrative regulations establishing a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k). This administrative regulation establishes this procedure.

Section 1. Definitions. (1) "Affected county board of elections" means a county board of election that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(2) "Affected county clerk" means a county clerk in a county that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(3) "Affected election area [district]" means an election area [district] for which a state of emergency has been declared for all or part of an election area [district] as specifically described by the Governor in an executive order issued pursuant to KRS 39A.100(1)(k).

(4) "Precinct election official" means an individual who has been appointed to serve as an election official in a precinct in accordance with the provisions of KRS 117.045.

(5) "Voting place" means a place for voting established in accordance with the provisions of KRS 117.065.

Section 2. General Provisions. (1) Election officials shall follow the elections emergency contingency plan as specifically mandated by the Governor through an executive order, pursuant to KRS 39A.100(1)(k), suspending or delaying an election.

(2) The procedures in the general election laws, KRS Chapters 116 to 121A, shall be applicable to an election conducted pursuant to the Elections Emergency Contingency Plan [elections emergency contingency plan], unless superseded by:

(a) The Governor's executive order, pursuant to KRS 39A.100(1)(k); or

(b) Provisions of this administrative regulation.

(3) County boards of elections shall establish procedures to implement the provisions of this administrative regulation at the local level and shall file the "County Board of Elections Notice of Establishment of Local Elections Emergency Contingency Plan Procedures" Form SBE 20 on or before the first day of March of each year in which a general election occurs.

(4) County boards of elections shall train all precinct election officers prior to each primary and general election on the procedures established by the county boards of elections to implement the Elections Emergency Contingency Plan [elections emergency contingency plan] during the training required by KRS 117.187.

Section 3. Notification. After the Governor has issued an executive order pursuant to KRS 39A.100(1)(k), the State Board of Elections shall notify all county clerk's in the affected election area [district] or statewide, in accordance with the Governor's executive order.

Section 4. Voting Places. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall:

(1) Identify the number of voting places that are functional, that can be repaired, and that have been destroyed; and

(2) Establish new voting places, if needed, in a manner consistent with KRS 117.065.

Section 5. Precinct Election Officers. If an affected county board of elections determines that new precinct election officers are required because of an emergency, the affected county board of elections shall use the same list of precinct election officers from the suspended election and may create a new list of additional precinct election officers in a manner consistent with the provisions of KRS 117.045.

Section 6. Procedures for Conducting an Election Rescheduled Prior to the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election, prior to the original date scheduled for an election by law, the affected county clerk shall ensure that the public receives prompt notification of the suspension or delay of an election in accordance with KRS Chapter 424, if possible, and any other means available.

(2) Absentee voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately:

(a) Reserve absentee voting being conducted pursuant to KRS 117.065(1)(c); and

(b) Secure all voting machines being used for absentee voting until absentee voting may be resumed in accordance with KRS 117.065(1)(c).

(3) Absentee ballots. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all unvoted absentee ballots and related materials in a secured and locked storage container or area until absentee voting may be resumed in accordance with KRS 117.065(1)(c).

(4) Examination of voting equipment. (a) The date of examination of voting equipment, conducted pursuant to KRS 117.165, which has been previously noticed, but is affected by the suspension or delay of an election, shall be re-
noted pursuant to KRS Chapter 424, if possible, and any other means available. 

(b) The affected county board of elections shall not conduct a reexamination of the voting equipment if the affected county board of elections has already conducted the examination required by KRS 117.165 prior to receipt of the notice of the rescheduled election.

Section 7. Procedures for Conducting an Election Rescheduled After the Commencement of the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election after the commencement of an election, the affected county clerk shall ensure that the public receives immediate notification of the suspension of the election and the date of the rescheduled election by any means possible, including all electronic media available and notice in accordance with KRS Chapter 424.

(2) Suspend general voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall immediately:

(a) Suspend general voting being conducted on all voting systems;

(b) Instruct the precinct election officers to secure all voting machines being used for general voting until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k);

(c) Instruct the precinct election officers to not closeout or tally the votes in the voting machines. The precinct election officers shall ensure that all seals on the voting machines are intact prior to storage in a secure location;

(d) Instruct the precinct election officers to record the public counter number on the form furnished by the county board of elections and the form shall be signed by all present precinct election officers; and

(e) Instruct the precinct election officers to return all election materials to the county board of elections.

(3) Ballots and election materials. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all election materials, including unvoted absentee ballots, paper ballots, provisional ballots, precinct signature rosters, and related materials, in a secured and locked storage container or area until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k).

(4) Conduct of rescheduled election.

(a) If the precinct signature roster and voting machines are intact from the original election date, then only those persons duly registered to vote upon the original election date who did not vote on that date shall be entitled to vote on the additional day of voting in that precinct;

(b) If the precinct signature rosters or the voting machines are not intact from the original election date;

1. [then] Any person duly registered to vote upon the original election date, regardless of whether that person voted on the original election date, shall be entitled to vote on the additional day of voting in that precinct;

2. If the signature rosters are destroyed or incomplete and the voting machines are intact, the county board of elections shall use a new set of precinct signature rosters provided by the State Board of Elections, clear the voting machines of all votes, and reset the machines for use in the rescheduled election; and

3. If the voting machines are not intact, the county board of elections shall repair, replace, or acquire new voting machines.

(c) Voting on the rescheduled election day shall be accomplished by physically appearing at the voting place. The time set by law for casting or canvassing a military, absentee, or special presidential ballots shall not be extended by the executive order rescheduling the election. Any absentee, military, or special presidential ballot duly received on the original election date shall be valid.

Section 8. Release and Certification of Election Returns. (1) If a statewide election is affected by the suspension or delay of an election in an affected election area [district] pursuant to KRS 39A.100(1)(k):

(a) County boards of elections not located in the affected election area [district] that have races affected by the suspension or delay of an election in an affected election area [district] shall

1. Withhold returns for affected races until the county boards of elections in those counties where an election has been suspended or delayed have conducted rescheduled elections and are able to certify returns to the Secretary of State;

2. Not release any vote totals for the affected races until the suspended election has been completed in the affected counties;

3. Instruct the precinct election officers to not closeout or tally the votes in the voting machines;

4. Instruct the precinct election officers to secure and seal each voting machine, and not to post the vote totals of the affected races at the precinct as required by KRS 117.265. The precinct election officers shall immediately return all election materials to the county board of elections and

5. Tally the vote totals from each precinct and only post at the county clerk's office the vote totals for those races not affected by the suspension or delay pursuant to KRS 39A.100(1)(k).

(b) The State Board of Elections shall notify the county boards of elections not located in the affected election area [district] that have races affected by the suspension or delay of an election in an affected election area [district] when vote totals are to be delayed and when vote totals shall be certified to the Secretary of State.

(2) If a county election, or any part of a county election, is suspended, the vote totals for all races affected by the suspension or delay shall be released by the affected county board of elections until after the polls have closed in those precincts [jurisdictions] with delayed elections.

Section 9. Post-Election Deadlines. All post-election timeframes and deadlines not specifically addressed in the provisions of this administrative regulation that are enumerated in general election laws shall be suspended until the rescheduled election occurs, in accordance with the Governor's executive order, pursuant to KRS 39A.100(1)(k).


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

TREY GRAYSON, Chair
APPROVED BY AGENCY: March 21, 2006
FILED WITH LRC: April 14, 2006 at 9 a.m.
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation fulfills the mandate of KRS 117.015(1)(b) that requires the State Board of Elections to establish a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 117.015(1)(b) and 39A.100(1)(k).

(c) How this administrative regulation conforms to the content of the following statutes: KRS 117.015(1)(b) requires the State Board of Elections to establish a procedure for election officials to follow if an election has been suspended or delayed. This administrative regulation establishes an Elections Emergency Contingency Plan for local election officials to follow if the Governor issues an executive order pursuant to KRS 39A.100(1)(k) rescheduling an election.
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: All election officials and boards.
(3) State the aspect or service of local government to which this administrative regulation relates: The conduct of elections.
(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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:
(a) Revenues: See below.
(b) Expenditures: See below.
(c) Other Explanation: There will be no costs associated with this regulation, unless the Governor issues an executive order suspending or delaying an election and the Elections Emergency Contingency Plan is implemented. Once the Elections Emergency Contingency Plan is implemented, the costs associated will depend upon the extent of the emergency, the size of the area affected, the size of the population affected, and the type of election that is affected. The cost of a regularly-scheduled election is estimated to be $1,000 to $1,200 per precinct. The state reimburses counties $255 per precinct for a regularly-scheduled election with the remainder of the costs being borne by the local government. HB 135 revised KRS 117.235 to allow for counties to be reimbursed for a delayed or postponed election in the same manner as for a regularly-scheduled election. Additional sources of funding may include state or federal emergency funds.

STATEMENT OF EMERGENCY
31 KAR 4:170E

This emergency administrative regulation is being promulgated in response to the changes to KRS 117.235 pursuant to HB 301 2006 GA and signed by the Governor on March 30, 2006. Pursuant to the new language of KRS 117.235, the State Board of Elections is granted the authority to promulgate administrative regulations to provide for exceptions to the prohibition on electioneering. This emergency administrative regulation must be placed into effect immediately to apply to the next primary election to be held on May 16, 2006. An ordinary administrative regulation is not sufficient, because it will not be effective in time for the May 16, 2006 primary election. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.
ERNE FLETCHER, Governor TREY GRAYSON, Chairman

KENTUCKY STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)
31 KAR 4:170E. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.235
STATUTORY AUTHORITY: KRS 117.235(3)
EFFECTIVE: April 14, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions. (1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate
or expressly advocates the passage or defeat of the ballot question.
(2) "Electioneering" is defined by KRS 117.235(3).
(3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.

Section 2. Electioneering shall not include a bumper sticker affixed to a person's vehicle while parked within or passing through a distance of 300 feet of any polling place on the day of any election for a reasonable amount of time in which to vote.

TREY GRAYSON, Chair
APPROVED BY AGENCY: April 5, 2006
FILED WITH LRC: April 14, 2006 at 9 a.m.
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan

(1) Provide a brief narrative summary of:
(a) What this administrative regulation does: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish exceptions to the prohibition on electioneering contained in KRS 117.235(3).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes exceptions to the prohibition on electioneering.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation informs all election officials, eligible voters, law enforcement officials, and the general public of the exceptions to the prohibition on electioneering.
(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:
(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters, registered voters, actual voters, all election officials and boards, all law enforcement officials, and the general public will be affected by this administrative regulation.
(4) An assessment of how the above group or groups will be impacted either by the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The groups will know the exceptions to the prohibition on electioneering within 300 feet of the polling place on election day.
(5) Estimate how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs associated with this regulation.
(b) On a continuing basis: There will be no costs associated with this regulation.
(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: There will be no source of funding necessary for the implementation of this administrative regulation.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in funding will be necessary.
(b) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.
(9) TIERING: Is tiering applied? Tiering was not applied, because this administrative regulation applies equally to all citizens.

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: All election officials, boards of election, precinct election officer, and local law enforcement.
(3) State the aspect or service of local government to which this administrative regulation relates: The conduct and regulation of elections and the ability to electioneer by the general public.
(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:
(a) Revenues: None
(b) Expenditures: None
(c) Other Explanation: None

STATEMENT OF EMERGENCY
103 KAR 16:150E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Emergency Amendment)
103 KAR 16:150E. Apportionment and allocation; financial organizations and loan companies.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120 [Chapter 141A]
EFFECTIVE: April 6, 2006
NECESSITY, [AND] FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation interprets the statute as it applies to the apportionment and allocation of interstate financial organizations and loan companies.

Section 1. General. For financial organizations and loan companies [if the primary business of the corporation is making loans].
the business income earned within Kentucky shall be determined by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent), plus the weighted property factor (twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent), and the denominator of which is four (4).

Section 2. Sales Factor. The sales factor is a fraction, the numerator of which is all receipts derived from loans or other sources negotiated through offices located in Kentucky, and the denominator of which is total business receipts.

Section 3. Outstanding Loan Balance Factor. The outstanding loan balance factor is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices in Kentucky. The denominator is the average loan balance of all outstanding loans. The average outstanding loan balance is determined at the beginning and end of the taxable period. However, if the yearly beginning and ending balance results in an inequitable factor, the average outstanding loan balance will be computed on a monthly average basis.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(8)(b).

R.B. RUDOLPH, JR, Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Staff Assistant, Financial and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Knows a brief summary of:
(a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation interprets the statute as it applies to the apportionment and allocation of interstate financial institutions and loan companies.
(b) The necessity of this administrative regulation: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration of all tax statutes.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation gives guidance, in a specific type of situation, concerning how to apportion income.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation tells interstate financial institutions and loan companies how to apportion income.
(2) If 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 "financial institutions" to the regulation language.
(b) The necessity of the amendment to this administrative regulation: Apportionment in Kentucky was changed under HB 272 2005 GA.
(c) How the amendment conforms to the content of the authorizing statutes: It adds financial institutions to the statute which already covered loan companies. Both entities are already treated similarly under current law.
(d) How the amendment will assist in the effective administration of the statutes: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
(3) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: This provision applies to loan companies and financial institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: These entities are being given guidance on how to apportion income.
(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: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation relates to a tax statute which must be administered uniformly under the Kentucky Constitution.

STATEMENT OF EMERGENCY
103 KAR 16:310E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR, Secretary
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:310E. Domestic production activity deduction.

RELATES TO: KRS 141.010(13)
STATUTORY AUTHORITY: KRS 131.130(1)
EFFECTIVE: April 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.010(3) requires that net income, in the case of corporations, means gross income as defined in KRS 141.010(12) minus the deduction allowed by KRS 141.0202 and minus the deductions from gross income allowed corporations by chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the certain deductions listed in KRS 141.010(13). Net income in the case of taxpayers other than corporations is defined in KRS 141.010(11). This administrative regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.

Section 1. Definitions. (1) "Apportionment factor" is defined in KRS 141.120(8)(c) and computed for the separate return filer or the EAG.
(2) "Corporations" means:
Section 6. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON. Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3694.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.010(13) requires that net income in the case of corporations, means gross income as defined in KRS 141.010(12) minus the deduction allowed by KRS 141.0202 and minus the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the certain deductions listed in KRS 141.010(13). Net Income in the case of taxpayers other than corporations is defined in KRS 141.010(1). This regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by HB 272 2005 GA.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Any taxpayer that takes the domestic production activity deduction.

(3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation provides guidance as to how the DPAD is calculated.

(4) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Partially: None
(b) On a continuing basis: None
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(8) TIERING: Is tiering applied? Tiering was used to the extent that the administrative regulation recognizes differences between consolidated and separate filers.

Section 5. General Partnerships. The distributive share of DPAD items shall be passed through to the individual partner.
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STATEMENT OF EMERGENCY
103 KAR 16:320E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet’s Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2005. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERINIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:320E. Claim of right doctrine.

RELATES TO: KRS 141.010(13), 141.050.
STATUTORY AUTHORITY: KRS 131.130(1).
EFFECTIVE: April 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: Internal Revenue Code 1341 provides for an adjustment pursuant to the claim of right doctrine. KRS 141.010 determines a corporation’s Kentucky net income. This administrative regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.

Section 1. Definition. “Internal Revenue Code” is defined in KRS 141.010(3).

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return, and follows:

(1) If the year the income or deduction was originally reported or deducted is still open under the statute of limitations, the claim of right shall be made by amending that same year’s corporation income tax return.

(2) If the year the income or deduction was originally reported or deducted is closed, as the statute of limitations has expired, the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes, subject to the following limitations:

(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141.

(b) For example, if a corporation reported claim of right income of $1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of $12,000, then the adjustment for the claim of right cannot exceed $12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation’s business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle also applies in cases where the tax rates differ between the applicable years and when no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.

Section 2. Documentation. The burden shall be on the corpo-ration to show that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax which was paid on such income. Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable to Kentucky.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON. Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 155-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: Internal Revenue Code 1341 provides for an adjustment pursuant to the claim of right doctrine. KRS 141.010 determines a corporation’s Kentucky net income. This regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance on the interaction between the Internal Revenue Code and the Kentucky Revised Statutes with regards to the claim of right issue.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance on the interaction between the Internal Revenue Code and the Kentucky Revised Statutes with regards to the claim of right issue.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any corporation income taxpayer who makes a claim of right adjustment on its federal income tax returns which also files Kentucky corporation income tax returns.
(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: They will have instruction on how to apply the claim of right doctrine to Kentucky income tax.
(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: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation relates to statutes that are generally
applicable to all Kentucky corporation income tax payers.

STATEMENT OF EMERGENCY
103 KAR 16:330E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being promulgated by the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:330E. Apportionment and allocation; separate accounting.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120
EFFECTIVE: April 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(9)(e)(1) states that if the allocation and apportionment provisions do not fairly represent the extent of the corporation's business activity in Kentucky, a corporation may petition for, or the Department of Revenue may require, in respect to all or any part of the corporation's business activity, if reasonable, separate accounting. This regulation explains when separate accounting shall apply.

Section 1. General. A corporation may apply for an alternative apportionment method using separate accounting, or the Department of Revenue may require separate accounting, if the corporation or Department of Revenue can establish either:

(1) That the business income subject to apportionment, or (2) One (1) or more of the factors does not fairly represent the activity of the corporation's business activities in Kentucky. The fact that taxable income is greater or lesser, or that the corporation's accounting records reflect income by contracts or by states is not sufficient to support a request for separate accounting.

Section 2. Separate Accounting. If a corporation is permitted or required to use separate accounting, the authorization or requirement shall be applied prospectively from the date or taxable year it was directed in writing by the Department of Revenue or requested by the corporation. Income tax returns filed under such conditions are subject to audit and review on a separate accounting basis to determine the correctness of income and expenses, but the method of apportioning net income shall not be changed retroactively.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(9)(e)(1) states that if the allocation and apportionment provisions do not fairly represent the extent of the corporation’s business activity in Kentucky, a corporation may petition for, or the Department of Revenue may require, in respect to all or any part of the corporation's business activity, if reasonable, separate accounting. This regulation explains when separate accounting shall apply.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by the HB 272 2005 GA.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help taxpayers determine when separate accounting is appropriate.

2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any interstate business which has Kentucky income not fairly represented by the normal apportionment calculations.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation will help taxpayers determine when separate accounting is appropriate.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(i) Initially: None
(ii) On a continuing basis: None
(iii) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

4) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

5) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation relates to statutes that are generally applicable to interstate businesses.

STATEMENT OF EMERGENCY
103 KAR 16:340E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's De-
department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2006. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 18:340E. Apportionment and allocation; completed contract method.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120
EFFECTIVE: April 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. This administrative regulation explains how the business income apportionment factors shall be calculated when net income is reported on a completed contract basis.

Section 1. Definitions. (1) "Completed contract method of accounting" means a method of accounting whereby business income from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted.
(2) "Long-term contracts" means contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

Section 2. General. If a corporation uses the completed contract method of accounting, the business income earned within Kentucky shall be determined by a weighted fraction, the numerator of which is the weighted sales factor fifty (50) percent, plus the weighted property factor twenty-five (25) percent, and the denominator of which is four (4), as modified by the following special rules for business income derived from long-term contracts.

Section 3. Sales Factor. The numerator and denominator of the sales factor shall be determined pursuant to KRS 141.120(8)(c) and the following special rules:
(1) Gross receipts derived from the performance of a contract shall be attributable to Kentucky if the construction project is located in Kentucky. If the construction project is located partly within and partly without Kentucky, the gross receipts attributable to Kentucky shall be based upon the ratio which construction costs for the project in Kentucky incurred during the taxable year bear to the total of construction costs for the entire project during the taxable year.
(2) The sales factor shall include the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Section 4. Property Factor. The numerator and denominator of the property factor shall be determined pursuant to KRS 141.120(8)(c) and the following special rules:
(1) The average value of the corporation's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billing (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts), shall be included in the denominator of the property factor. The value of any construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.
(2) Rent paid for the use of equipment directly attributable to a particular construction project shall be included in the property factor at eight (8) times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

Section 5. Payroll Factor. The numerator and denominator of the payroll factor shall be determined pursuant to KRS 141.120(8)(b) and the following special rules:
(1) Compensation paid employees which is attributable to a particular construction project shall be included in the payroll factor even though capitalized into the cost of construction.
(2) Compensation paid employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributable to the state in which the services are performed.

Section 6. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each contract completed during the taxable year, regardless of whether the project is located within or without Kentucky, to determine the amount of income which is attributable to sources within Kentucky. The amount of income from each contract completed during the taxable year apportioned to this state, plus other business income apportioned to this state by the regular three (3) factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to Kentucky shall be the measure of tax for the taxable year. The amount of income (or loss) from each contract which is derived from sources within Kentucky using the completed contract method of accounting shall be computed as follows.
(1) In the taxable year in which the contract is completed, the income (or loss) therefrom is determined.
(2) The income (or loss) determined at (1) above shall be apportioned to Kentucky by the following method:
(a) A fraction is determined for each year during which the contract was in progress. The numerator shall be the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator shall be the total of all construction costs for the project.
(b) Each percentage determined in (a) shall be multiplied by the apportionment factor for that particular year as determined in Section 2 of this administrative regulation.
(c) The percentages determined at (b) for each year during which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at subsection (1) shall be multiplied by the total percentage. The resulting income (or loss) is the amount of business income from the contract derived from sources within Kentucky.

Section 7. Computation for Year of Withdrawal, Dissolution or Cessation of Business. (1) Use of the completed contract method of accounting requires that income derived from sources within Kentucky from incomplete contracts in progress outside Kentucky on the date of withdrawal, dissolution or cessation of business in Kentucky be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.
(2) The amount of income (or loss) from each contract to be apportioned to Kentucky by the apportionment method set forth in Section 2 of this administrative regulation shall be determined as follows:
(a) The amount of business income (or loss) for each contract shall be the amount by which the gross contract price from each contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during the period in connection with each
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contract.

(b) In so doing, account shall be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each contract.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

1) Provide a brief summary of:
   (a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation explains how the business income apportionment factors shall be calculated when net income is reported on a completed contract basis.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by HB 272 2005 GA.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will guide taxpayers in using the completed contract method.
   (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: N/A, this is a new administrative regulation.
      (b) The necessity of the amendment to this administrative regulation: N/A
      (c) How the amendment conforms to the content of the authorizing statutes: N/A
      (d) How the amendment will assist in the effective administration of the statutes: N/A
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any interstate business which uses the completed contract method of reporting net income.
   (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation explains a necessary calculation.
   (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: Agency funds.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

9) TIERING: Is tiering being applied? Tienning was not used, because this administrative regulation relates to statutes that are generally applicable to all interstate businesses that report income on a completed contract basis.

STATEMENT OF EMERGENCY

103 KAR 17:060E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2005. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(Emergency Amendment)

103 KAR 17:060E. Income subject to taxation; portions.

RELATES TO: KRS 141.010, 141.020
STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 49A]
EFFECTIVE: April 6, 2006
NECESSITY, [AND FUNCTION, AND CONFORMITY: This administrative regulation prescribes method of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.

Section 1. Residents. The entire net income of a full-year resident individual is subject to Kentucky income tax regardless of its source. Income from out-of-state sources is not exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident are not limited to those paid in Kentucky.

Section 2. Persons Becoming Residents During the Year. (1) Persons who become Kentucky residents during the year are subject to Kentucky individual income tax upon their entire net incomes [income] from any source after becoming [a] Kentucky residents [resident] and upon their [incomes] [income] from Kentucky sources prior to becoming [a] Kentucky residents [resident].
   (2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons [Taxpayers] who become residents during the year are limited to either:
      (a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.010(10) and (11) paid after becoming [a] Kentucky residents [resident]; or
      (b) That portion of total adjustments to gross income and itemized deductions that Kentucky income bears to total income.

Section 3. Persons Becoming Nonresidents During the Year. (1) Persons who are Kentucky residents, but become nonresidents during the year, are subject to Kentucky individual income tax upon their entire net incomes [income] from all sources while they are [a] Kentucky residents [resident], and upon their [incomes] [income] from Kentucky sources after becoming nonresidents [nonresident].
   (2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons who become nonresidents during the year are generally limited to that portion of total adjustments to gross income and total itemized deductions allowed pursuant to KRS 141.010(10) and (11) that Kentucky income bears to total income.

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Section 4. Nonresidents. Any net income of a nonresident is subject to Kentucky income tax if it is derived from services performed in Kentucky or from property located in Kentucky. Income from sources outside Kentucky is not subject to Kentucky income tax, nor are losses incurred outside Kentucky deductible in computing Kentucky adjusted gross income. Except as provided in Section 6 of this administrative regulation for net operating loss deductions, the adjustments to gross income and the itemized deductions allowed pursuant to KRS 141.010(10) and (11) are limited to that portion of adjustments to gross income and total itemized deductions that Kentucky income bears to total income.

Section 6. Allocation Based Upon Kentucky Income. If a deduction or an adjustment to gross income is allowable based upon the portion of certain bases of income and is limited to a maximum amount deductible for federal income tax purposes, the Kentucky income used to make the allocation shall be the same type of income used to allow the deduction on the federal return.

Section 6. Net Operating Loss Deduction. An individual resident, a part-year individual resident, or an individual nonresident shall compute the net operating loss deduction using Kentucky income and expenses allowed or allowable on the Kentucky return.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Division of Legislative Services, Finance and Administration Cabinet, Room 158B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Angela Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.
(b) The necessity of this administrative regulation: This administrative regulation explains income deduction distinctions among residents, nonresidents, and part-year residents.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By describing each category of residency, this administrative regulation helps taxpayers determine the Kentucky portions of their incomes
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation enacts into regulation various revenue policies that were rendered void with the adoption of KRS Chapter 13A. The changes also amend the language of an administrative regulation on the same topic to allow adjustments to gross income under KRS 141.010(10) and (11) due to tax modernization.
(b) The necessity of the amendment to this administrative regulation: The necessity is partially caused by a change in the tax statutes and partially from the desire to provide guidance on the issues of the void policies.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.
(d) How the amendment will assist in the effective administration of the statutes: It provides guidance to taxpayers on filing issues.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentucky individual income tax payers.
(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: They are being provided with guidance as to what deductions are applicable based on residency status.
(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: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was used to the extent that the regulation sets out the statutorily distinct treatment of residents, nonresidents, and part-year residents.

STATEMENT OF EMERGENCY
103 KAR 17:100E

This emergency administrative regulation is being promulgated in response to the withdrawal of the policies and circulars issued by the Department of Revenue that predated the enactment of KRS Chapter 13A (requiring that such actions be done only by an administrative regulation). The Finance and Administration Cabinet's Department of Revenue is permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 132 and the Kentucky Constitution relating to ad valorem taxation. This emergency administrative regulation must be placed into effect immediately to eliminate any question or confusion as to the proper application of the ad valorem tax laws to the subject matter of this regulation. An ordinary administrative regulation is not sufficient, as it would not be in place in time to provide proper guidance for tangible personal property tax returns due on or before May 15, 2006. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 17:100E. Division of Income between married individuals filing separate tax returns.

RELATES TO: KRS 141.020; 141.080; 141.300; 141.305
STATUTORY AUTHORITY: KRS 131.130(1)
EFFECTIVE: April 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides guidelines for determining how income derived from joint ownership of property and self-employment is divided among married individuals filing separate tax returns.

Section 1. Income derived from the joint ownership of real property, tangible personal property, and intangible property shall be divided equally by married individuals filing separate tax returns. Income derived from property not held jointly shall be attributable to its individual owner.
Section 2. Income derived from self-employment by a husband and wife filing separate tax returns.

(1) Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the percentage amount of each spouse’s contribution of services and capital, unless self-employment taxes have been paid by each spouse separately, or a partnership agreement provides evidence of separate income.

(2) The following shall serve as an example.

<table>
<thead>
<tr>
<th>Capital Contributions</th>
<th>Services Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband: 30% + 75%</td>
<td>105 / 2 = 53%</td>
</tr>
<tr>
<td>Wife: 70% + 25%</td>
<td>95 / 2 = 47%</td>
</tr>
</tbody>
</table>

Section 3. If a joint declaration of estimated tax is made by a husband and wife, but a joint return is not made for the same taxable year, the joint estimated tax payments for the taxable year shall be divided in the same manner as provided under Internal Revenue Code Section 6015.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
Contact person: Angela Robinson, Staff Assistant, Division of Legislative Services, Finance and Administration Cabinet, Room 155B Capitol Annex, Frankfort, Kentucky 40601, (502) 564-4240 (telephone), (502) 564-3894 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines for determining how income derived from joint ownership of property, and self-employment is divided among married individuals filing separate tax returns.

(b) Whether this administrative regulation is necessary: It is necessary to provide guidance how to calculate income for married individuals filing separately.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: Through an example, this administrative regulation shows how married taxpayers, filing separately, should account for the income from joint property.

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

(a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation:

This administrative regulation will affect married individuals who receive income from joint property, but file separately.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of the administrative regulation, if new, or by the change, if it is an amendment: They are being provided with guidance and calculation examples.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation is generally applicable to any married taxpayer who files separately, but has joint income.

STATEMENT OF EMERGENCY

503 KAR 3:070E

KRS 13A.190(1)(a) provides that an emergency administrative regulation is one that must be placed into effect immediately to meet an imminent threat to public health, safety, or welfare or prevent a loss of federal or state funds. 503 KAR 3:050E provides the requirements for graduation from the Department of Criminal Justice Training Telecommunications Academy. On February 28, 2003, President Bush issued Homeland Security Presidential Directive-5 requiring National Incident Management System (NIMS) training and exercises. On December 7, 2004, I, Governor Ernie Fletcher, signed an executive order for the Commonwealth of Kentucky, adopting the National Incident Management System. To maintain full compliance with federal guidelines, all new Kentucky telecommunicators will receive NIMS training as an added eight (8) hour block of instruction in the Telecommunications Academy courses at DOCT. This increase in instruction is necessary to fully incorporate the required NIMS training so that Kentucky telecommunicators and law enforcement agencies can comply with and be eligible for federal homeland security grant opportunities and mandates. More importantly, this necessary training will better serve to protect the citizens and communities of our Commonwealth. Kentucky will be the first state in the nation to fully train all telecommunicators and police officers on NIMS as a result of the action and will be better situated to acquire needed grant awards, meet demands placed on officers and telecommunicators, and provide quality law enforcement and telecommunications services to constituents. The amendment to this administrative regulation is necessary to include homeland security National Incident Management System training in each Telecommunications Academy class for 2006. Due to time constraints, these administrative regulations will not become effective in time to add this necessary training to the first Telecommunications Academy for 2006. It is essential that law enforcement telecommunicators be properly trained so that public safety is increased and lives protected. It is anticipated that the present amendment will result in a great benefit to Kentucky telecommunicators and law enforcement agencies and the taxpayers of this Commonwealth. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 17, 2006. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
JOHN W. BIZZACK, Ph.D., Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Emergency Amendment)


RELATES TO: KRS 15.560
STATUTORY AUTHORITY: KRS 15.590
EFFECTIVE: March 17, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Tele-
communications Academy - non-CJIS.

Section 1. Definitions. (1) "Academy" means the 128 [420] hour Telecommunications Academy course conducted by the department that does not include training on the Criminal Justice Information System (CJIS).

(2) "KLEC" means the Kentucky Law Enforcement Council.

Section 2. Academy Content. The academy shall consist of the following six (6) [five-(6)] areas:

1. Basic telecommunications;
2. Emergency medical dispatch;
3. Cardiopulmonary resuscitation (CPR);
4. Critical incidents; [and]
5. Spanish for the telecommunicator; [and] [1]

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

(a) Successfully complete a minimum of 128 [420] hours of KLEC-approved training;
(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:
   1. Eighty (80) percent on the emergency medical dispatch written examination;
   2. Eighty (80) percent on the CPR written examination; and
   3. Seventy (70) percent on all other examinations for which a numerical score is assigned;
(c) Pass all examinations for which a pass or fail designation is assigned; and
(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and if required, they shall be successfully completed to pass the training area for which they were assigned.

(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section.

(3) To avoid unnecessary repetition of coursework:
(a) A telecommunicator who attends the Non-CJIS Telecommunications Academy and has previously successfully completed basic telecommunications or any other area of the Non-CJIS Telecommunications Academy, as established in Section 2 of this administrative regulation, shall:
   1. Receive credit for that training area; and
   2. Not be required to repeat that training area of the Non-CJIS Telecommunications Academy; and
(b) The Commissioner of the Department of Criminal Justice Training may, upon written request, award a certificate of completion to a law enforcement telecommunicator who has successfully completed all of the training areas that compose the Non-CJIS Telecommunications Academy.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

(2) A trainee who fails an examination shall not be reexamined:
(a) Earlier than forty-eight (48) hours from the original examination; or
(b) Later than the last scheduled day of the academy.

(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the Professional Development [in-service-training] Branch manager or telecommunications training section supervisor.

(2) If an excused absence causes a trainee to miss any of the 128 [420] hours of the academy, the training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstances, if these:

1. Extenuating circumstance preventing completion of the academy does not last for a period longer than one (1) year; and
2. Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. (1) If, while enrolled in the academy, a trainee's employment as a telecommunicator is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a telecommunicator.

(2) The trainee shall repeat the academy in its entirety if:
(a) The break in employment exceeds one (1) year; or
(b) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:

(1) Available to the KLEC and the Secretary of the Justice Cabinet for inspection or other appropriate purposes; and
(2) Maintained in accordance with KRS Chapter 171.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: March 17, 2006
FILED WITH LRC: March 17, 2006 at 10 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the guidelines and procedures for graduation from the Department of Criminal Justice Training (DOCT) Telecommunications academy.

(b) The necessity of this administrative regulation: The regulation is necessary so that the Commissioner of the Department of Criminal Justice Training can fulfill his responsibility, as established in KRS 15.590, to promulgate administrative regulations necessary for the proper training of Law Enforcement Telecommunicators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations regarding telecommunications practices. This administrative regulation is necessary to establish graduation requirements for the DOCT Telecommunications academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent rules and procedures for graduation from DOCT Telecommunications Academy.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing regulatory structure: This amendment will add eight (8) hours of homeland security training to the current curriculum.

(b) The necessity of the amendment to this administrative regulation: This addition is necessary so that the Commonwealth will be in compliance with new federal requirements relating to the funding of Homeland Security. The federal Department of Homeland Security will require all grant recipients (state, county, municipal, and any other subdivisions) to complete the National Incident Management System orientation and certification program by the end of 2006. Kentucky is unique in its ability to standardize training for all peace officers and concurrently provide training that is uni-
The Commonwealth will be the first state in the union to achieve the milestone of all peace officers trained on this federal requirement by the end of 2006. This will afford Kentucky communities a distinct advantage over other states in their quest for limited federal assistance in the short-term and long-term.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations necessary for training, in-service training, and telecommunications practices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit the telecommunications agencies and permit the Commissioner of the Department of Criminal Justice Training to fulfill his responsibilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

All law enforcement agencies in the Commonwealth that utilize DOCJT telecommunications academy training, which is presently approximately 200 agencies, including most state, county, and local agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or the change, if it is an amendment. It is anticipated that agencies should be positively impacted due to the amendment of this administrative regulation in that they will be eligible for federal Homeland Security funding.

The only negative impact will be the addition of 8 additional hours of training over the course of the 4 week academy.

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

(a) Initially, the cost of implementation should be approximately $700,000. This total includes the costs of homeland security and additional training for the Department of Criminal Justice Training basic training course (503 KAR 1:110) and the CJJS Telecommunications Academy (503 KAR 3:500), the administrative regulations for which are being filed in conjunction with this administrative regulation.

(b) On a continuing basis, approximately $125,000 per year. This total includes the costs of homeland security and additional training for the Department of Criminal Justice Training basic training course (503 KAR 1:110) and the CJJS Telecommunications Academy (503 KAR 3:500), the administrative regulations for which are being filed in conjunction with this administrative regulation.

(6) What is the current source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFFP).

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

(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 United States 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 regulation will affect. Local law enforcement agencies in the Commonwealth that utilize DOCJT telecommunications academy training, which is presently approximately 200 agencies

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. KRS 15.565 requires a CJJS telecommunicator to successfully complete the Telecommunications Academy. On February 28, 2003 President Bush issued Homeland Security Presidential Directive-5 requiring National Incident Management System (NIMS) training and exercises. On December 7, 2004, Governor Ernie Fletcher signed an executive order for the Commonwealth of Kentucky, adopting the National Incident Management System.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): Other than paying compensation to telecommunication during the four week period that they are attending the Telecommunications Academy, this administrative regulation should have no effect on expenditures and revenues. The current overall length of the Telecommunications Academy is 120 hours over a period of 3 weeks. The amendment for Homeland Security training will add an additional 8 hours to the curriculum. However, the current overall 3-week schedule will not change. While telecommunications trainees are at Richmond participating in the DOCJT Telecommunications Academy, they are paid a salary from their employing agency. Depending on whether a trainee is paid a salary or hourly wage, an agency may be required to pay overtime or compensatory time for the eight hour increase.

Other Explanation: None.

STATEMENT OF EMERGENCY
505 KAR 1:101E

This emergency administrative regulation is being promulgated in order to implement a "Scoring SOP" for use by the Department of Juvenile Justice, in conjunction with the 1201 classification manual which was previously incorporated by reference in 505 KAR 1:100. KRS 13A.190(1)(e) provides that an emergency regulation is one (1) that must be placed into effect to meet "an imminent threat to public health, safety, or welfare." The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute a scoring system for the placement of juveniles based upon their treatment needs, security level and the security of the community. The "Scoring SOP" previously used by the Department of Juvenile Justice has been invalidated by the Franklin Circuit Court in the case of Petitioners v. Bishop, et al, 04-CI-00195, because the scoring system used for placement of juveniles within the Department's continuum of care was not previously incorporated by reference into the classification manual. As such, the Franklin Circuit Court has held that an emergency exists because, "DJJ has no scoring mechanism in place to utilize with the classification manual and policies implemented in conjunction with the manual and it has been determined that one (1) is necessary for the classification system to function appropriately." This emergency regulation is not being replaced by an ordinary administrative regulation. Rather, this emergency "Scoring SOP" is being implemented for use as a scoring mechanism until the ordinary regulation relating to 505 KAR 1:100, which was filed on January 13, 2006, becomes effective. The proposed revisions to the ordinary regulation, 505 KAR 1:100, incorporate a new classification and assessment system for placing juveniles within the Department of Juvenile Justice's continuum of care.

ERNIE FLETCHER, Governor
STEVE PENCE, Lt. Governor
JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Admissions
(New Emergency Administrative Regulation)

505 KAR 1:101E. Department of Juvenile Justice Scoring SOP.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120,
Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250
EFFECTIVE: March 21, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice for the classification and assessment of juveniles, specifically the Scoring SOP used to score juveniles for placement in a continuum of care, which is to be used in conjunction with the 12/01 Classification Manual.

Section 1. Incorporation by reference. (1) The "Scoring SOP" which identifies the number of points required for various placements within the Department of Juvenile Justice, March 15, 2006, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIDGET SKAGGS BROWN, Commissioner
APPROVED BY AGENCY: March 15, 2006
FILED WITH LRC: March 21, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on Monday, May 22, 2006, at 9 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is requested. If you do not wish to be heard at the public hearing, you may submit written comments on the emergency administrative regulation. Written comments shall be accepted until May 31, 2006. 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: LaDonna Koebel, Deputy General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel
(1) Provide a brief summary of:
(a) What this administrative regulation does:
This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential and community population.
(b) The necessity of this administrative regulation:
To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
The regulation governs every aspect of the program services of the Department of Juvenile Justice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A. This is not an amendment to an existing administrative regulation, but a newly created emergency administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A. This is not an amendment to an existing administrative regulation, but a newly created emergency administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is not an amendment to an existing administrative regulation, but a newly created emergency administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: N/A. This is not an amendment to an existing administrative regulation, but a newly created emergency administrative regulation.
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1460 employees of the residential programs, 2864 youth in all programs, and all visitors and volunteers to the Department of Juvenile Justice facilities.
(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: This emergency administrative regulation provides a Scoring SOP by which juveniles can be assessed and placed in foster care, group homes, private child care, or residential facilities within the Department of Juvenile Justice. Implementation of this emergency administrative regulation is necessary because the Department of Juvenile Justice does not currently have a Scoring SOP by which to score and assess juveniles for placement in a continuum of care. The former Scoring SOP used by the Department of Juvenile Justice has been invalided by an order of the Franklin Circuit Court in Petitioners v. Ron Bishop, et al, 04-CI-00196, because it was not previously filed with LRC or incorporated by reference in the Classification Manual.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $5000
(b) On a continuing basis: $5000
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2004-2006 biennium.
(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) Tiann: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all of this individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY
907 KAR 1:145E

This emergency administrative regulation is being promulgated to allow group homes to serve additional supports for community living (SCL) service recipients. This administrative regulation must be implemented on an emergency basis in order to protect the health, safety, and welfare of individuals displaced from an intermediate care facility for individuals with mental retardation or a
developmental disability (ICF-MR-DD). Failure to enact this admin-
istrative regulation on an emergency basis would pose an im-
minent threat to the public health, safety, or welfare of Medicaid
recipients displaced from an ICF-MR-DD. This emergency admin-
istrative regulation shall be replaced by an identical ordinary admin-
istrative regulation to be concurrently filed with the Regulations
Compiler.

ERNEST FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Emergency Amendment)

907 KAR 1:145E. Supports for community living services
for an individual with mental retardation or a developmental
disability.

RELATES TO: KRS 205.520, 205.5205, 42 C.F.R. 441 Sub-
part C, and U.S.C. 1396a, b, d, n
STATUTORY AUTHORITY: KRS 194A.030(194A.030)(2),
194A.050(1), 205.520(3), 205.6317
EFFECTIVE: April 4, 2006
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-
726, effective July 1, 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 Serv-
es. 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 [a] requirement that may be im-
posed, or opportunity presented, by federal law for the provision of
medical assistance to Kentucky's indigent citizens. This adminis-
trative regulation establishes the coverage provisions relating to
home and community-based services provided to an individual with
mental retardation or a developmental disability as an alternative to
placement in an Intermediate care facility for an individual with
mental retardation or a developmental disability.

Section 1. Definitions. (1) "Assessment" or "reassessment"
means a comprehensive evaluation of abilities, needs, and services
that is:
(a) Completed on a MAP-351B;
(b) Submitted to the department for a level of care determina-
tion; and
(c) Conducted prior to an individual's initial admission to the
waiver and at least annually thereafter.
(2) "Behavior intervention committee" or "BIC" means a group of
individuals established to evaluate the technical adequacy of a
proposed behavior intervention for an SCL recipient.
(3) "Behavior support specialist" means an individual who
has a master's degree with formal graduate course work in a beha-
vioral science and at least one (1) year of experience in behavior-
al programming.
(4) "Certified psychologist with autonomous functioning" or
"licensed psychological practitioner" means a person licensed
pursuant to KRS 319.000 through 319.990.
(5) "DCBSS" means the Department for Community Based
Services.
(6) "Department" means the Department for Medicaid
Services or its designee.
(7) "Developmental disability" means a disability that is man-
ifested prior to the age of twenty-two (22), which constitutes a sub-
stantial disability to the affected individual, and is attributable to
mental retardation or related conditions that result in impairment of
general intellectual functioning and adaptive behavior similar to
that of a person with mental retardation and are a direct result of,
or are influenced by, the person's substantial cognitive deficits.
(8) "DMHRR" means the Department for Mental Health
and Mental Retardation Services.
(9) "DMR" means the Division of Mental Retardation in the
Department for Mental Health and Mental Retardation Services.

(10) "Electronic signature" is defined in KRS 369.102.
(11) "Good cause" means a circumstance beyond the
control of an individual that affects the individual's ability to access
funding or services, which includes:
(a) Illness or hospitalization of the individual which is expected
to last sixty (60) days or less;
(b) Death or incapacitation of the primary caregiver;
(c) Required paperwork and documentation for processing in
accordance with Section 2 of this administrative regulation has not
been completed but is expected to be completed in two (2) weeks
or less;
(d) The individual or his or her legal representative has made
diligent contact with a potential provider to secure placement or
access services but has not been accepted within the sixty (60)
day time period; or
(e) The individual is residing in a facility and is actively partic-
ipating in a transition plan to community based services, the length
of which is greater than sixty (60) days but less than one (1) year.
(12) "Human rights committee" means a group of individu-
als established to protect the rights and welfare of an SCL recipi-
ent.
(13) "ICF-MR-DD" means an Intermediate care facility for
an individual with mental retardation or a developmental disability.
(14) "Individual support plan" or "ISP" means a written
individualized plan developed by an SCL recipient, or an SCL re-
ipient's legal representative, support coordinator, or others design-
ated by an SCL recipient.
(15) "Level of care determination" means a determination by
the department that an individual meets low-intensity or high-
intensity patient status criteria in accordance with 907 KAR 1:022.
(16) "Licensed marriage and family therapist" or "LMFT" means
a person licensed pursuant to KRS 335.300 to 335.399.
(17) "Licensed professional clinical counselor" or "LPC" means
a person licensed pursuant to KRS 335.500 to 335.599.
(18) "Medically necessary" or "medical necessity" means
that a covered benefit is determined to be needed in accordance
with 907 KAR 3:130.
(19) "Mental retardation" means significantly sub-average in-
 tellectual functioning; an intelligence quotient of approximately
greater than or equal to seventy (70) or below; concurrent deficits or impairments in present
adaptive functioning in at least two (2) of the following areas: com-
munication, self-care, home living, social or interpersonal skills, use
of community resources, self-direction, functional academic skills,
work, leisure, health, and safety; with an onset before eighteen
(18) years of age.
(20) "Occupational therapist" means an individual who is
licensed in accordance with KRS 319A.010.
(21) "Physical therapist" means an individual who is li-
censed in accordance with KRS 319A.010.
(22) "Psychologist" means an individual who is licensed
in accordance with KRS 319.050.
(23) "Psychologist with autonomous functioning" means
an individual who is licensed in accordance with KRS 319.056.
(24) "Qualified mental retardation professional" or
"QMRP" means an individual who has at least one (1) year of ex-
pertise with persons with mental retardation or developmental
disabilities and meets the professional criteria in accordance with 42 C.F.R. 483.430.
(25) "Registered nurse" or "RN" means a person who is cur-
rently licensed pursuant to KRS 314.011(5), and who has one (1)
year or more experience as a professional nurse.
(26) "SCL provider" means an entity that meets the crite-
ria established in Section 3 of this administrative regulation.
(27) "SCL recipient" means an individual who meets the
criteria established in Section 2 of this administrative regulation.
(28) "Social worker" means an individual qualified pursuant
to KRS Chapter 335.
(29) "Speech therapist" means an individual who is li-
censed in accordance with KRS 334A.030.
(30) "Supports for community living" or "SCL" means
home and community-based waiver services for an individual with
mental retardation or a developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termina-
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1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-50;
2. The Freedom of Choice of Home and Community Based Waiver for Persons with MR-DD Service Providers Form, MAP-4102;
3. The MAP-351B Assessment Form;
4. The level of care determination;
5. [4.] The results of a physical examination that was conducted within the last twelve (12) months;
6. [5.] A statement for the need for long-term care services which shall be signed and dated by a physician or a QMRF and be less than one (1) year old;
7. [6.] The results of a psychological examination completed by a licensed psychologist;
8. [7.] A social case history which is less than one (1) year old;
9. [8.] A projection of the needed supports and a preliminary MAP-145 SCL plan for meeting these needs; and
10. A MAP-24C documenting an individual’s status change; and

and

1. Receive notification of an admission packet approval from the department.
2. To maintain eligibility as an SCL recipient:
   a. An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;
   b. An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605;
   c. An ICF-MR-DD level of care determination shall be performed by the department at least once every twelve (12) months; and
   d. An SCL provider shall notify the local DCBS office and the department on a MAP-24C form if an SCL recipient is:
      1. Terminated from the SCL waiver program;
      2. Admitted to an ICF-MR-DD facility; or
      3. Transferred to another Medicaid waiver program.

3. An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or an individual not in an ICF-MR-DD or other facility. (4)
4. The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services [expense] would reasonably be expected to exceed the cost of ICF-MR-DD services [service].
5. Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:
   a. An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.
   1. The individual or legal representative shall have the burden of documenting [providing documentation of] good cause, including:
      a. A statement signed by the recipient or legal representative;
      b. Copies of letters to providers; and
      c. Copies of letters from providers.
   d. A copy of a transition plan for individuals residing in a facility.
   2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
      a. Sixty (60) days for an individual who does not reside in a facility; or
      b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the ISP for a period greater than sixty (60) consecutive days without good cause shown.
1. The recipient or legal representative shall have the burden of providing documentation of good cause including:
   a. A statement signed by the recipient or legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers.
2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:
   a. Sixty (60) days for an individual who does not reside in a facility; and
   b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;
(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or
(d) An SCL recipient does not meet ICF-MR-DD patient status [level of care] criteria.

6. Involuntary termination of a service to an SCL recipient by an SCL provider shall require:
   a. Simultaneous notice to the SCL recipient or legal representative and the case manager at least twenty (20) days [support coordinator at least ten (10) days] prior to the effective date of the action, which shall include:
      1. A statement of the intended action;
      2. The basis for the intended action;
      3. The authority by which the action is taken; and
      4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
   (b) Submittal of a DMR-001 to DMHR at least twenty (20) days prior to the effective date of the intended action;
   (c) The case manager [support coordinator] in conjunction with the provider to:
      1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
      2. Provide assistance to the SCL recipient in making contact with another SCL provider;
      3. Arrange transportation for a requested visit to an SCL provider site;
      4. Provide a copy of pertinent information to the SCL recipient or legal representative;
      5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured; and
   6. Continue to provide support until alternative services or another placement is secured; and
7. Provide assistance to ensure a safe and effective service transition.

7. Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to DMHR.
   a. An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
   b. The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Provider Participation. (1) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:
(a) Be certified by the department prior to the initiation of the service;
(b) Be recertified at least annually by the department; and
(c) Have a main office within the Commonwealth of Kentucky.
(2) An SCL provider shall comply with 907 KAR 1:619, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20.078.
(3) An SCL provider shall have a governing body that shall:
(a) Be a legally constituted entity within the Commonwealth of Kentucky;
(b) Not contain a majority of owners;
(c) Be responsible for the overall operation of the organization that shall include:
1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;
2. Appointing and annually evaluating the executive director;
3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
5. Orienting a new member of the governing body to the operation of the organization.

(a) An SCL provider shall:
  (b) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient:
      1. Child;
      2. Parent;
      3. Sibling; or
      4. Spouse;

(b) Not enroll an SCL recipient for whom they cannot meet the support needs:
(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and
(d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(e) An SCL provider shall maintain documentation of its operations which shall include:
        (a) An annual review of written policy and procedures;
        (b) A written description of available SCL waiver services;
        (c) A current table of organization;
        (d) A memorandum of understanding with an SCL case management [support coordination] provider with whom they share individual support plans;
        (e) Information regarding satisfaction of an SCL recipient and the utilization of that information; and
        (f) A quality improvement program; and
        (g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(f) An SCL provider shall:
    (a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;
    (b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;
    (c) Meet the following requirements if responsible for the management of SCL recipient funds:
        1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
        2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
        3. The SCL recipient or legal representative shall be notified if a loose balance is accrued that may affect Medicaid eligibility.

(g) An SCL provider shall have a written statement of its mission and values, which shall:
      (a) Support empowerment and informed decision-making;
      (b) Support and assist people to remain connected to natural support networks; and
      (c) Promote dignity and self-worth.

(h) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:
      (a) Require a timely response to an inquiry;
      (b) Require the opportunity for interaction by direct care staff;
      (c) Require prompt notification of any unusual occurrence;
      (d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient’s right of privacy;
      (e) Require involvement in decision making regarding the selection and direction of the service provided; and
      (f) Consider the cultural, educational, language and socioeco-
SCL recipient's services;
(b) Be cumulative;
(c) Be readily available;
(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;
(e) [Contains a legend that identifies any symbol and abbreviations used in making a record entry];
(f) Contain the following specific information:
1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);
2. The intake or face sheet;
3. The MAP-351B Assessment form completed at least annually [self-assessment];
4. An assessment summary relevant to the service area;
5. The current ISP;
6. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes [provides skills training to the SCL recipient];
7. The service objective for those supports which do not provide skills training;
8. A list containing emergency contact telephone numbers;
9. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;
10. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
11. A recognizable photograph [that is less than one (1) year old] of the SCL recipient;
12. Legally adequate consent, updated annually, for the provision of services or other treatment [which shall include those requiring emergency attention and shall be located at each service site;
13. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;
14. The SCL recipient's social history updated at least annually;
15. The results of an annual physical exam;
16. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;
17. Psychological evaluation;
18. Original and current level of care certification; and
19. Notice of Availability for Long Term Care Waiver Agency/Hospice Form in the case management and residential record; and
20. A copy of the approved SCL-1 form:
(f) [Requires that the provider shall]
(g) [Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to avoid disclosure of SCL recipient or legal representative to determine when to share the information as provided by law];
(h) [Have the safety from loss, destruction or use by an unauthorized person ensured by the provider]; and
(i) [Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and
(j) [Have a corresponding legend which the provider shall make readily accessible].

An SCL provider shall:
(a) Ensure that each staff, prior to providing direct care to a recipient, has tested negatively for tuberculosis within the past twelve (12) months; and
(b) Maintain documentation of each staff person's negative tuberculin test;
(c) Have written personnel guidelines for each employee to include:
1. Salary range;
2. Vacation and leave procedures;
3. Health insurance;
4. Retirement benefits;
5. Opportunity for continuing education; and
6. Gneatue procedures;
(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;
(d) Annually review each job description;
(e) For each potential employee, prior to employment, obtain a criminal record check from the Administrative Office of the Courts in which the individual resided or worked in the previous year. For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency; and
(f) For twenty-five (25) percent of employees, obtain a criminal record check from the Administrative Office of the Courts, or other states designated equivalent annually for each state in which the individual resided or worked in the previous year;
(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers annually thereafter if the individual is placed;
(h) Prior to employment and annually thereafter if the individual is hired; and
2. Prior to placement as a volunteer performing direct care staff or a supervisory function, and annually thereafter if the individual is placed;
(i) [Require that the provider shall]
(j) [Have an executive director who:
1. Is qualified with a bachelor's degree in administration or a human services field; or
2. Is a registered nurse; and
[Has a minimum of one (1) year of administrative responsibilities in an organization which served individuals with mental retardation or a developmental disability;[ and
2. Has a program director of the SCL waiver program who:
1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities; and
2. Is a QMPP; and
3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;
(c) Have adequate direct-contact staff who:
1. Is eighteen (18) years or older; and
(b) Has a high school diploma or GED; or
2. Is at least twenty-one (21) years old; and
(b) Is able to adequately communicate with recipients and staff; and
[Has a valid Social Security number or valid work permit if not a U.S. citizen; and
4. Can understand and carry out instructions; and
5. Has ability to keep simple records; and
(c) Has adequate supervisory staff who:
1. Is eighteen (18) years or older; and
(b) Has a high school diploma or GED; or
2. Is at least twenty-one (21) years old; and
(b) Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability; and
3. Is able to adequately communicate with the recipients, staff, and family members; and
4. Has a valid Social Security number or valid work permit if not a U.S. citizen; and
5. Has ability to perform required record keeping;
(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:
(a) Ensuring the health, safety and welfare of the SCL recipient;
(b) Maintenance of sanitary conditions; and
(c) Ensuring each site operated by the provider is equipped with:
1. An operational smoke detector placed in strategic locations;
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and
2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC; (d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 [140] degrees Fahrenheit; (e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.000 which shall ensure: 1. Safe storage and use of common household items; and 2. That firearms and ammunition are permitted:
   a. Only in a family care home or an adult foster care home; and b. Only if stored separately and under double lock; (f) Establish written procedures concerning the safe storage of common household items:
   (a) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician; (b) [g) Ensuring that staff administering medication:
1. Have specific training per the DMHMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and
2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
   a. Be kept in a locked container;
   b. Be controlled substance, be kept under double lock;
   c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and
   d. Be documented on a medication administration form and properly disposed of, if discontinued; and
   (g) Honoring policies and procedures for ongoing monitoring of medication administration;
   (h) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:
   (a) Be readily accessible on site;
   (b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient to his or her disability;
   (c) Include an evacuation drill to be conducted in three (3) minutes or less, [and] documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and
   (d) Mandate that the result of an evacuation drill be evaluated and modified as needed.
   (i) An SCL provider shall:
   (a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;
   (b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;
   (c) Require documentation of all training which shall include:
      1. The type of training provided;
      2. The name and title of the trainer;
      3. The length of the training;
      4. The date of completion; and
      5. The signature of the trainee verifying completion; (d) Ensure that each employee [prior to independent functioning], completes training which shall include:
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   3. Crisis prevention and management;
   4. Identification and prevention of abuse, neglect, and exploitation; and
   Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports:
   (e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include:
   1. Medication administration training per cabinet-approved curriculum;
   2. Medications and seizures;
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   5. Crisis prevention and management;
   6. Identification and prevention of abuse, neglect, and exploitation; and
   7. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports.
   (f) Ensure that all employees complete core training, consistent with a DMHMR-approved curriculum, not later than six (6) months from the date of employment, which shall include:
   1. Values, attitudes, and stereotypes;
   2. Building community inclusion;
   3. Person-centered planning;
   4. Positive behavior support;
   5. Human sexuality and persons with disabilities;
   6. Self determination; and
   7. Strategies for successful teaching, [complete Phase I training, complete with a DMHMR-approved curriculum, prior to working independently but no later than three (3) months from the date of employment, which shall include:
      1. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;
      2. Training on the identification and reporting of abuse, neglect, and exploitation;
      3. Training to support an individual with mental retardation of a developmental disability;
      4. Medication and seizures;
      5. Safety awareness;
      6. Recordkeeping;
      7. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
      8. Coronary-pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
      9. Medication administration, which shall be provided by a nurse, pharmacist, or medical doctor;
   (g) Ensure that each employee completes Phase II training, consistent with a DMHMR-approved curriculum, within six (6) months of employment, which shall include:
      1. Introduction to mental retardation and other developmental disabilities;
      2. Values and principles;
      3. Working with a family;
      4. Individualized planning;
      5. Understanding behavior;
      6. Learning to listen;
      7. Health needs and services;
      8. Social and sexual aspects of life;
      9. Basic home management if the employee has responsibility for:
         a. Laundering;
         b. House cleaning;
         c. Food storage and meal planning; or
         d. An activity in the home; and
      10. Nutrition and meal planning if the employee has responsibility for:
         a. Interaction of common medication with food;
         b. Nutritional needs;
         c. Basic meal planning; or
         d. Food storage and handling; (g) [f] Not be required to receive the training specified in this section if the provider is:
1. An occupational therapist providing occupational therapy;
2. A physical therapist providing physical therapy;
3. A psychologist or psychologist with autonomous functioning providing psychological services; or
4. A speech therapist providing speech therapy; and
   (l) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:
   1. Orientation to the agency;
   2. Individualized Instruction on the needs of the SCL recipient to whom the volunteer provides support;
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
   4. Cardiopulmonary (Coronary-pulmonary) resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization.

Section 4. Covered Services. (1) A SCL waiver service shall:
(a) Be prior authorized by the department; and
(b) Be provided pursuant to the individual support plan.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:
(a) Adult day training which shall:
    1. Support the SCL recipient to participate in daily meaningful routines in the community;
    2. Stress training in:
        a. The activities of daily living;
        b. Self-advocacy;
        c. Adaptive and social skills, and
        d. Vocational skills;
    3. Be provided in a nonresidential or community setting that can:
        a. Be in a fixed location;
        b. Occur in public venues;
        c. Not be diversional in nature;
        d. Be provided as group services which shall:
            a. Include facility-based services provided on a regularly-scheduled basis;
            b. Lead to the acquisition of skills and abilities to prepare the participant for work and/or community participation or
            c. Prepare the participant for transition from school to work or adult support services;
        e. Be provided as off-site services which shall:
            a. Include services provided in a variety of community settings;
            b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
            c. Be designed to result in increased ability to access community resources without paid supports;
            d. Provide the opportunity for the participant to be involved with other members of the general population;
            e. Be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
            f. Be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider;
            g. Be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;
        7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;
    8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities throughout the individual service plan;
    9. Be provided at a time mutually agreed to by the recipient and provider;
   10. Be provided to recipients age twenty-two (22) or older; or
   11. Be provided to recipients age sixteen (16) to twenty-pro (21) years as a transition process from school to work or adult support services;
   12. Be documented by:
        a. A time and attendance record which shall include

   (j) The date of the service;
   (a) The beginning and ending time of the service;
   (b) The location of the service; and
   (h) The signature, date of signature, and title of the individual providing the service; and
   b. A detailed monthly summary staff note which shall include:
      i. The month, day, and year for the time period covered by each note written;
      ii. Progress toward outcomes identified in the ISP;
      iii. Progression, regression, and maintenance toward outcomes identified; and
      iv. The signature, date of signature, and title of individual preparing the summary staff note;
   13. Be limited to five (5) days per week, 255 days maximum per year;
   14. Not exceed eight (8) hours per day or forty (40) hours per week; and
   15. Not exceed sixteen (16) hours per day when provided in combination with community living supports or supported employment;
(b) An assessment service including a comprehensive assessment which shall:
   1. Identify an SCL recipient’s needs and the services that the SCL recipient or his family cannot manage or arrange for on his or her behalf;
   2. Evaluate an SCL recipient’s physical health, mental health, social supports, and environment;
   3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;
   4. Be conducted within seven (7) calendar days of receipt of the request for assessment;
   5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his family by the assessor in the SCL recipient’s home;
   6. Not be reimbursable if the individual or any member of the individual’s household does not receive a level of care certification;
(c) A reassessment service which shall:
   1. Determine the continuing need for SCL waiver services;
   2. Be performed at least every twelve (12) months;
   3. Be conducted using the same procedures as for an assessment service;
   4. Be conducted by a SCL case manager and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
   5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and
   6. Not be retroactive.
   (d) Behavioral support which shall:
      1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
      2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
      3. Include a functional analysis of the SCL recipient’s behavior which shall include:
         a. An analysis of the potential communicative intent of the behavior;
         b. The history of reinforcement for the behavior;
         c. Critical variables that precede the behavior;
         d. Effects of different situations on the behavior; and
         e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
         f. [3] Include the development of a behavioral support plan which shall:
            a. Be developed by the behavioral specialist;
            b. Be implemented by [as] either SCL provider staff in all relevant environments and activities;
            c. Be revised as necessary;
            d. Define the techniques and procedures used;
            e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
1. [a] Include the hierarchy of behavior interventions ranging from the least to the most restrictive;  
2. [i] Reflect the use of positive approaches; and  
3. [g] Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;  
4. [g] Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;  
5. [g] Include the monitoring of an SCL recipient’s progress which shall be accomplished through:  
   a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and  
   b. The reports of an SCL provider involved in implementing the behavioral support plan;  
6. [g] Provide for the design, implementation, and evaluation of systematic environmental modifications;  
7. [g] Be provided by a behavior support specialist who shall have:  
   a. A master’s degree with formal graduate course work in a behavioral science; and  
   b. One (1) year of experience in behavioral programming;  
8. [f] Be documented by a detailed staff note which shall include:  
   a. The date of the service;  
   b. The beginning and ending time; and  
   c. The signature, date of signature and title of the behavioral specialist; and  
9. [g] Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavioral support plan and staff training;  
   a. Case management which shall be:  
      1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;  
      2. Assisting an SCL recipient in the identification, coordination, and management of the support team and support team members;  
      3. Assisting an SCL recipient and the support team to develop, update, and monitor the ISP which shall:  
         a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;  
         b. Be updated at least annually or as changes occur;  
         c. Be submitted on the MAP-3519 and MAP-149 SCL forms; and  
      d. Include the addendum to the ISP and be sent to DMHMR within fourteen (14) days of the effective date that the change occurs with the SCL recipient;  
      4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;  
      5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;  
      6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;  
      7. Timely distribution of the ISP, case prevention plan, assessment, and other documents to chosen SCL service providers;  
      8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;  
      9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a case prevention plan which shall be:  
         a. Individual-specific;  
         b. Annually reviewed; and  
         c. Updated as a change occurs;  
      10. Assisting an SCL recipient in planning resource use and assuring protection of resources;  
      11. Exclusive of the provision of a direct service to an SCL recipient;  
      12. Monthly face-to-face contact with an SCL recipient;  
      13. Monitoring the health, safety, and welfare of an SCL recipient;  
      14. Monitoring all of the supports provided to an SCL recipient;  
      15. Establishing a human rights committee which shall:  
         a. Include an:  
            (i) SCL recipient;  
            (ii) Individual not affiliated with the SCL provider; and  
            (iii) Individual who has knowledge and experience in rights issues;  
         b. Review and approve, prior to implementation and at least annually thereafter, all ISPs with rights restrictions;  
         c. Review and approve, prior to implementation and at least annually thereafter, in conjunction with the SCL recipient’s team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and  
         d. Review the use of a psychotropic medication by an SCL recipient with a diagnosis;  
      16. Establishing a behavior intervention committee which shall:  
         a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;  
         b. Be separate from the human rights committee;  
         c. Review and approve, prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient’s team, all behavior support plans; and  
         d. Review the use of a psychotropic medication by an SCL recipient with a diagnosis and recommend an alternative intervention when appropriate;  
      17. Documented by a monthly summary report which shall include:  
         a. Documentation of monthly contact with each chosen SCL provider;  
         b. Documentation of monthly face-to-face contact with an SCL recipient; and  
         c. Progress towards outcomes identified in the ISP;  
      18. Provided by a case manager who shall:  
         a. Have a bachelor’s degree in a human service;  
         b. Be a certified SCL provider;  
         c. Be a qualified social worker;  
         d. Be a licensed marriage and family therapist;  
         e. Be a professional clinical counselor;  
         f. Be a certified psychologist; or  
         g. Be a licensed psychological practitioner;  
      19. Supervised by a case management supervisor who shall be an RN or  
      20. Documented by a detailed monthly summary report which shall include:  
         a. The month, day, and year for the time period each note covers;  
         b. Progression, regression, and maintenance toward outcomes identified in the ISP; and  
         c. The signature, date of signature, and title of the individual preparing the note;  
      (f) Children’s day habilitation which shall be:  
         1. The provision of support, training, and intervention in the areas of:  
            a. Self-care;  
            b. Sensory/motor development;  
            c. Daily living skills;  
            d. Communication; and  
            e. Adaptive and social skills;  
         2. Provided in a nonresidential or community setting;  
         3. Provided to enable the recipient to participate in and access community resources;  
         4. Provided to help remove or diminish common barriers to participation in typical roles in community life;  
         5. Provided at a time mutually agreed upon by the recipient and provider;  
         6. Limited to:  
            a. Individuals who are in school and up to sixteen (16) years of age;  
            b. Up to eight (8) hours per day, five (5) days per week; and  
            c. Up to sixteen (16) hours per day in combination with community living supports; and  
         7. Documented by:  
            a. A time and attendance record which shall include:
(1) The date of service.
(2) The beginning and ending time of the service.
(3) The location of the service.
(4) The signature, date of signature, and title of the individual providing the service.
(a) A detailed monthly staff note which shall include:
(i) The month, day, and year for the time period each note covers;
(ii) Progress toward outcomes identified in the ISP;
(iii) The signature, date of signature, and title of the individual preparing the summary staff note.
(b) Community habilitation which shall be:
(i) The provision of support, training, and intervention in the areas of:
   a. Self-care;
   b. Daily living skills;
   c. Communication;
   d. Behavior support;
   e. Social skills;
   f. Vocational training;
   g. Provided in the community or a nonresidential setting or community setting that can:
      a. Be a fixed location or workshop; or
      b. Occur in public venues
      c. Be provided to enable the SCL recipient to:
         i. Participate in a community project as a volunteer in a typically unpaid position;
         ii. Access and utilize community resources; and
         iii. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than didactic;
      d. Provided to individuals who are:
         i. Eighteen (18) years of age or older;
         ii. Sixteen (16) years of age as part of a transition process from school to work;
   d. Documented by:
      a. A time and attendance record which shall include:
         i. The date of service;
         ii. The beginning and ending time;
         iii. The date, month, day, and year for each note written;
      b. A detailed monthly staff note which shall include:
         i. The month, day, and year for the time period each note covers;
         ii. Progress toward outcomes identified in the ISP;
         iii. The signature, date of signature, and title of the individual providing the service;
      c. Limited to forty (40) hours per week alone or in combination with supported employment and a provisiorial service.
(a) [6] Community living supports which shall:
1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his own home or in his family's home;
2. Be supports and assistance which shall not be diversional in nature and shall include:
   a. Assistance;
   b. Activity training,
   c. Laundry;
   d. Routine household care and maintenance;
   e. Activities of daily living;
   f. Personal hygiene;
   g. Shopping;
   h. Use of money management;
   i. Medication management;
   j. Socialization;
   k. Relationship building;
   l. Leisure choices;
   m. Participation in generic community activities; [or]
   n. Therapeutic goals; or
   o. Nonmedical care not requiring nurse or physician intervention;
3. Not replace other work or day activities;
4. [4] Be provided on a one-on-one basis;
5. [4] Not be provided at an adult day-training or children's day care community habilitation site;
6. [6] Be documented by:
   a. A time and attendance record which shall include:
      i. The date of the service;
      ii. The beginning and ending time of the service;
   b. A detailed monthly summary note which shall include:
      i. The time, month, day, and year for the time period each note covers [written];
      ii. Progress toward outcomes identified in the ISP;
      iii. Progress, regression, and maintenance toward outcomes identified in the ISP;
   c. The signature, date of signature and title of the individual preparing the summary note; and
7. [6] Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;
(b) Community habilitation, supported employment, and provisiorial services;
(c) Occupational therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;
2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
3. Training of other SCL providers in improving the level of functioning;
4. Exclusive maintenance or the prevention of regression;
5. Provided by an occupational therapist and
6. Documented by a detailed staff note which shall include:
   a. Progress toward outcomes identified in the ISP;
   b. The date of the service;
   c. Beginning and ending time; and
   d. The signature, date of signature and title of the individual providing the service;
(f) [6] Physical therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
3. Training of another SCL provider in improving the level of functioning;
4. Exclusive maintenance or the prevention of regression;
5. Provided by a physical therapist and
6. Documented by a detailed staff note which shall include:
   a. Progress made toward outcomes identified in the ISP;
   b. The date of the service;
   c. Beginning and ending time of the service; and
   d. The signature, date of signature and title of the individual providing the service;
(f) [6] A provisiorial service which shall be:
1. Designed to prepare an SCL recipient for paid or unpaid employment through activities that are not job specific but including:
   a. Supporting the SCL recipient to understand the meaning, value, and demands of work;
   b. Teaching social and communication skills;
   c. Teaching habilitative goals;
   d. Teaching work performance skills; or
   e. Job seeking and maintaining skills;
2. Provided to an SCL recipient who is not expected to be able to join the general work force within one (1) year;
C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;
4. Provided on a one-to-one basis;
5. Documented by:
a. A time and attendance record which shall include;
(i) The date of the service;
(ii) The beginning and ending time; and
(iii) The signature, date of signature and title of the individual providing the service; and
b. A detailed monthly summary note which shall include;
(i) The time, month, day and year for each note written;
(ii) The time, month, day and year for the time period the note covers;
(iii) Progression, regression and maintenance toward outcomes identified in the ISP; and
(iv) The signature, date of signature and title of the individual preparing the note; and
6. Limited to forty (40) hours per week alone or in combination with community habilitation;
7. [g] Psychological services which shall:
   1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;
   2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;
   3. Include:
      a. The administration of psychological testing;
      b. Evaluation;
      c. Diagnoses; and
      d. Treatment;
   4. Be incorporated into the ISP with input from the psychological service provider for the development of program-wide support;
   5. Be provided by a psychologist or a psychologist with autonomous function;
   6. Be documented by a detailed staff note which shall include:
      a. The date of the service;
      b. The beginning and ending time of the service, and
      c. The signature, date of signature and title of the individual providing the service;
8. [h] Respite service which shall:
   1. Include twenty-four (24) hour supervision in:
      a. A staffed residence which shall not have greater than three (3) SCL recipients of publicly-funded supports in a home rented or owned by the SCL provider;
      b. A group home which shall be licensed in accordance with 902 KAR 20.078 and shall not have greater than eight (8) [three (3)] SCL recipients; [unless an individual residing in the group home who is not an SCL recipient receives notification of SCL funding and designates to continue living in the group home];
      c. A family care home which shall not have greater than three (3) SCL recipients of publicly-funded supports living in the home; or
      d. An adult foster care home which shall not have greater than three (3) SCL recipients of publicly-funded supports aged eighteen (18) or over living in the home;
   2. Utilize a modular home only if the:
      a. Wheels are removed;
      b. Home is anchored to a permanent foundation; and
      c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;
   3. If provided via a modular home, have 180 days from the effective date of the administrative regulation to meet the modular home requirements;
   4. Not utilize a motor home;
   5. Provide a sleeping room which ensures that an SCL recipient:
      a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;
      b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;
      c. Does not share a room with an individual who presents a potential threat; and
      d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required
for the SCL recipient's health and comfort;
6. Provide assistance with daily living skills which shall include:
   a. Ambulation;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning and preparation;
   h. Laundry;
   i. Budgeting and financial matters; [or]
   j. Home care and cleaning; or
   k. Medication management;
7. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the individual support plan;
8. Provide or arrange for transportation to services, activities, and medical appointments as needed;
9. Include participation in medical appointments and follow-up care as directed by the medical staff, and
10. Be documented by a detailed monthly summary note which shall include:
   a. The time, month, day and year for each note written;
   b. The [time, month, day, and year for the time period the note covers;]
   c. Progression, regression and maintenance toward outcomes identified in the ISP; and
   d. The signature, date of signature, and title of the individual preparing the staff note;
9. [i] Speech therapy which shall be:
   1. Provided only to an SCL recipient unable to independently administer self-care;
   2. Provided in a variety of settings;
   3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;
   4. Provided only to an SCL recipient who resides in a family care home, adult foster care home, or his or her family's home;
   5. Limited to 1440 hours per calendar year; and
   6. Documented by a detailed staff note which shall include:
      a. The date of the service;
      b. The beginning and ending time; and
      c. The signature, date of signature and title of the individual providing the service.

c. The beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service;

(i) Support coordination which shall be:

1. Initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;
2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;
3. Assisting an SCL recipient and the support team to develop, update and monitor the ISP which shall:
   a. Be initially developed within thirty (30) days of the initiation of the service;
   b. Be updated at least annually and include the addendum to the ISP and be sent to DMHMR within fourteen (14) days of the effective date the change occurs with the SCL recipient;
   c. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;
   d. Furnishing an SCL recipient and legal representative with a listing of each accessible SCL provider in the service area;
   e. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and any change to the selection of an SCL provider and the reason for the change;
   f. Timely distribution of the ISP, crisis prevention plan, assessment, and other documents to chosen SCL service providers;
   g. Providing an SCL recipient and chosen SCL provider twenty-four (24) hour telephone access to a support coordination staff person;
   h. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:
      a. Individual specific;
      b. Annually reviewed and updated as a change occurs;
   i. Assisting an SCL recipient in planning resource use and ensuring protection of resources;
   j. Exclusive of the provision of a direct service to an SCL recipient;
   k. Monthly face-to-face contact with an SCL recipient;
   l. Monitoring the health. safety and welfare of an SCL recipient;
   m. Monitoring the supports provided to an SCL recipient;

15. Documented by a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider;

16. Documentation of monthly face-to-face contact with an SCL recipient and

17. Progress towards outcomes identified in the Individual Support Plan;

18. Provided by a support coordinator case manager who shall have a bachelor's degree in a human services;

19. Supervised by a support coordination case manager supervisor who shall be a GMAP;

20. Documented by a detailed monthly summary note which shall include:

a. The time, month, and year for each note written;

b. The time, month, day and year for the time period the note covers;

c. Progression, regression, and maintenance toward outcomes identified in the ISP and
d. The signature, date of signature and title of the individual preparing the note;

21. [es] Supported employment which shall be:

1. Intensive ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided in a variety of settings;

3. Provided on a one-to-one (1 to 1) basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;
DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMH shall occur on the following business day.

(3) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DMHMR, or designee on a monthly medication error report form by the tenth (10th) of the following month.

Section 6. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his region of origin in accordance with KRS 205.5317(3) and (4).

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

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

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

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

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

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

1. Abuse, neglect or exploitation of the individual as substantiated by DCBGS;
2. The death of the individual's primary caregiver and lack of an alternative primary caregiver;
3. The lack of appropriate placement for the individual due to:
   a. Loss of housing;
   b. Inappropriate hospitalization; or
   c. Imminent discharge from a temporary placement;
4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; or
5. The attainment of age 20 years and six (6) months, for an individual in the custody of DCBGS;

(b) Urgent. A service is needed within one (1) year as determined by:
1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;
2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;
3. The diminished capacity of the primary caregiver due to a physical or mental status and the lack of an alternative primary caregiver;
4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;
5. Future planning. A service is needed in greater than one (1) year as determined by:
   1. The individual is currently receiving a service through another funding source that meets his or her needs;
   2. The individual is not currently receiving a service and does not currently need the service;
   3. The individual is in the custody of DCBGS and is less than twenty (20) years and six (6) months of age; or
   4. The individual is less than twenty-one (21) years of age.
   5. If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his legal representative and case management provider if identified.

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

(11) Maintenance of the SCL waiting list shall occur as follows:
(a) During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;
(b) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and
(c) The department shall, at a minimum, annually update the waiting list during the birth month of an individual. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program. The requested data shall be received by the department within thirty (30) days from the date of the letter.

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

(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

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

(15) The criteria for removal from the SCL waiting list shall be:
(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;
(b) The individual is deceased;
(c) Review of documentation reveals that the individual does not have a mental retardation diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;
(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list;
(e) [Reserved]
(f) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date;
1. The individual or legal representative shall have the burden of proving documentation of good cause, including:
   a. A signed statement by the individual or the legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers.
2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
   a. Sixty (60) days for an individual who does not reside in a facility or
   b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:
(a) The individual shall be moved to the future planning category;
(b) The chronological date shall remain the same.

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

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

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

(20) An individual shall be allocated potential funding based upon:
(a) His or her region of origin in accordance with KRS 205, 207(2) and (3);
(b) His or her category of need; and
(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:
(a) The treatment professionals determine that an SCL placement is appropriate for the individual, and
(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall:
(a) Develop and implement a written security policy which shall:
1. Be adhered to by all of the provider’s employees, officers, agents, and contractors;
2. Specify which individuals have access to which electronic signature(s) and password authorizations; and
3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form which shall:
1. Be completed and executed by each individual utilizing an electronic signature;
2. Attach to the signature’s authenticity; and
3. Include a statement indicating that the individual has notified the provider of his or her responsibility in allowing the use of the electronic signature; and
(3) Produce to the department a copy of the agency’s electronic signature policy, the signed consent form, and the original signed signature immediately upon request.

Section 8. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1.671.

(4) An Individual shall not appeal a category of need specified in Section 6 of this administrative regulation.


(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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: March 29, 2006
FILED WITH LRC: April 4, 2006 at 2 p.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Supports for Community Living (SCL) covered services, coverage provisions, and provider qualifications.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish SCL covered services, coverage provisions, and provider qualifications.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing SCL covered services, coverage provisions, and provider qualifications.
(d) How this administrative regulation currently assists or will assist in the effective administration of the authorizing statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing SCL covered services, coverage provisions, and provider qualifications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How this amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the allowed capacity in group homes for supports for community living (SCL) service recipients, as well as reconciles the regulation with federally-approved modifications to the SCL waiver program. Modifications include adding assessment and reassessments for an individual to establish a care plan, additional documentation requirements, revised training regulations, as well as adding a criminal record check requirement for volunteers.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to protect the health, safety, and welfare of individuals displaced from an intermediate-care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD).
(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 increasing the allowed capacity in group homes for SCL service recipients.
(d) How the amendment will assist in the effective administration of the authorizing statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by increasing the allowed capacity in group homes for SCL service recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The affected entities include all group homes as well as SCL recipients; particularly those displaced from an ICF-MR-DD location.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will increase the capacity for SCL service recipients in group homes and thus help accommodate SCL recipients, particularly those displaced from an ICF-MR-DD.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) is unable to accurately predict the fiscal impact of the amendment at this time, given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.
(b) On a continuing basis: DMS is unable to accurately predict the fiscal impact of the amendment at this time, given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are the funding sources utilized to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regulation, if new, or by the change that it is an amendment. No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or increase any fees.

(8) Tiering: Is tiering applied? Tiering was not appropriate in the 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.

STATEMENT OF EMERGENCY
907 KAR 1:155E

This emergency administrative regulation is being promulgated to increase reimbursement for group homes as a result of increasing the capacity for group homes to serve supports for community living (SCL) recipients. Group home capacity was increased via a companion administrative regulation, 907 KAR 1:145, to accommodate individuals who may be displaced from an Intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD). Group home reimbursement is also due an increase to more appropriately align it with group home provider costs. Family home and adult foster care home reimbursement rates are also being increased to ensure provider viability. Additionally, the companion administrative regulation eliminates coverage of community habilitation services and prevocational services, but establishes coverage of assessment and reassessment services, adult day training services, and children's day habilitation services. This administrative regulation is being amended to respectively eliminate and add reimbursement for the aforementioned services. This administrative regulation must be implemented on an emergency basis to ensure adequate residential options for individuals displaced from an intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD). Failure to do so would threaten the health, safety, and welfare of displaced individuals. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

ERNEST FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives (Emergency Amendment)

907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n
EFFECTIVE: April 4, 2006
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-444, effective May 11, 2004, reorganized the Cabinet for Health and 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, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the reimbursement provisions relating to home and community based waiver services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an Intermediate care facility for an individual with mental retardation or a developmental disability.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.
(2) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.
(3) "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.
(4) "Supports for community living" or "SCL" means community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service[as provided in subsection(2) of this section] provided to a Medicaid recipient who:
(a) Meets patient status criteria for an Intermediate care facility for an individual with mental retardation or a developmental disability as established in 907 KAR 1:022; and
(b) Is authorized for an SCL service by the department.
(2) In order to be covered, a service shall be described, defined, and provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3 SCL Reimbursement. [Specialized medical equipment and supplies shall.
(1) Specialized medical equipment and supplies shall:
(a) Not be available through the Medicaid Durable Medical Equipment, Vision, Hearing, or Dental Programs pursuant to 907 KAR 1:479, 907 KAR 1:038, and 907 KAR 1:028;
(b) Be ordered by a physician;
(c) Be specified in the Individual support plan as identified in 907 KAR 1:145;
(d) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;
(e) Be submitted on form MAP-95;
(f) Be reimbursed:
  1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and
  2. Based on the submission of three (3) price estimates of which the lowest will determine the amount of reimbursement; and
(g) Not include furniture, a recreational item, or a leisure item.
(2) A functional analysis to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.
(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.
(4) Monitoring of a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service.

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult day training on-site</td>
<td>15 minutes</td>
<td>$2.50</td>
</tr>
<tr>
<td>Adult day training off-site</td>
<td>15 minutes</td>
<td>$3.00</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>24 hours</td>
<td>$112.49 [864.38]</td>
</tr>
<tr>
<td>Assessment/reassessment</td>
<td>One assessment or reassessment</td>
<td>$75.00</td>
</tr>
<tr>
<td>Behavior support</td>
<td>15 minutes</td>
<td>$33.25</td>
</tr>
<tr>
<td>Case management</td>
<td>1 month</td>
<td>$376.06</td>
</tr>
</tbody>
</table>

Children’s Day habilitation
[Community habilitation]

<table>
<thead>
<tr>
<th>Service</th>
<th>Minutes</th>
<th>Rate [5.54x2.66]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community living</td>
<td>15 min</td>
<td>$5.54</td>
</tr>
<tr>
<td>Family home</td>
<td>24 hours</td>
<td>$112.4 (x64.28)</td>
</tr>
<tr>
<td>Group HOME</td>
<td>24 hours</td>
<td>$128.3 (x64.60)</td>
</tr>
<tr>
<td>Occupational therapy</td>
<td>15 min</td>
<td>$22.17</td>
</tr>
<tr>
<td>Physical therapy</td>
<td>15 min</td>
<td>$22.17</td>
</tr>
<tr>
<td>[Provisional services]</td>
<td>46 min</td>
<td>$6.64</td>
</tr>
<tr>
<td>Psychological services</td>
<td>15 min</td>
<td>$38.79</td>
</tr>
<tr>
<td>Respite</td>
<td>15 min</td>
<td>$2.77</td>
</tr>
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</table>

Specialized medical equipment and supplies

<table>
<thead>
<tr>
<th>Service</th>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Speech therapy</td>
<td>1 item</td>
</tr>
<tr>
<td>Staffed residence</td>
<td>24 hours</td>
</tr>
<tr>
<td>Support-coordination</td>
<td>4 month</td>
</tr>
</tbody>
</table>

Supported employment

<table>
<thead>
<tr>
<th>Service</th>
<th>Minutes</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speech therapy</td>
<td>15 min</td>
<td>$22.17</td>
</tr>
<tr>
<td>Staffed residence</td>
<td>24 hours</td>
<td>$168.46</td>
</tr>
<tr>
<td>[Support-coordination]</td>
<td>4 month</td>
<td>$382.31</td>
</tr>
<tr>
<td>Supported employment</td>
<td>15 min</td>
<td>$5.54</td>
</tr>
</tbody>
</table>

(1) Adult day training on-site and off-site shall be limited to:
(a) Forty (40) hours (160 units) per week; and
(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(2) Children’s day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider may receive an intensity payment.
(2) An intensity payment for a unit of service shall be:
(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;
(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and
(c) For the following SCL services:
   1. Staffed residence;
   2. Community living;
   3. Respite;
   4. Family home;
   5. Group home;
   6. Adult foster care home[er]; and
   7. Community habilitation.
(3) An intensity payment for a unit of service shall be as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Intensity Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffed residence</td>
<td>$33.69</td>
</tr>
<tr>
<td>Community living supports</td>
<td>$0.83</td>
</tr>
<tr>
<td>Respite</td>
<td>$0.42</td>
</tr>
<tr>
<td>Family home</td>
<td>$16.67 (x89.64)</td>
</tr>
<tr>
<td>Group home</td>
<td>$25.27 (x89.67)</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>$16.67 (x89.64)</td>
</tr>
<tr>
<td>[Community habilitation ]</td>
<td>$9.40</td>
</tr>
</tbody>
</table>

Section 6. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:
(a) By the department [or its designee]; and
(b) In accordance with the NC-SNAP Instructor’s Manual.
(2) A new NC-SNAP may be administered:
(a) At the department’s discretion; or

(b) At the timely request of an SCL provider if a change in a recipient’s circumstances results in the need for increased or decreased supportive services.
(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:
(a) In accordance with subsection (2)(b) of this section; or
(b) As a result of an appeal filed in accordance with Section 8(1) of this administrative regulation.

Section 7. Auditing and Reporting. An SCL provider shall maintain current records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 8. Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider’s reimbursement level.
(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.
(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.
(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) *MAP-85 Request for Equipment Form* Department for Medicaid Services, "September 2002 Edition*;
(b) "North Carolina Support Needs Assessment Profile (NC-SNAP)’, \"2000 Edition\", copyright Murdoch Center Foundation; and
(c) "NC-SNAP Instructor’s Manual", copyright 1999, Murdoch Center Foundation.
(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, J.D., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: March 29, 2006
FILED WITH LRC: April 4, 2006 at 2 p.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, (502) 564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for supports for community living (SCL) services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for SCL services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for SCL services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for SCL services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases reimbursement for group homes as a result of increasing the capacity for group homes to serve supports for community living (SCL) recipients. Group home reimbursement is also due an increase to more appropriately align it with group home provider
costs. Group home capacity was increased via a companion administrative regulation, 907 KAR 1:145, to accommodate individuals who may be displaced from an intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD). Family home and adult foster care home reimbursement rates are also being increased to ensure provider viability. Additionally, the companion administrative regulation eliminates coverage of community habilitation services and vocational services but establishes coverage of assessment and reasessment services, adult day training services, and children's day habilitation services. This administrative regulation is being amended to respectively eliminate or add reimbursement for the aforementioned services.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 50 group homes enrolled in the Medicaid Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Group homes, adult foster care homes, and family care homes will receive a higher reimbursement for SCL services as a result of this administrative regulation.

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

(a) Initially: The Department for Medicaid Services (DMS) is unable to accurately predict the fiscal impact of the amendment at this time given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.

(b) On a continuing basis: DMS is unable to accurately predict the fiscal impact of the amendment at this time given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations, and revenues from the Medical Assistance Revolving Trust Fund (MART) are utilized to fund the administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish 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 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"
Section 1. Definitions. (1) "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite year round.
(2) "Hoofed animal" means ungulate wildlife except wild hog and javelina.
(3) "Shooting preserve" means a place where animals are held or propagated in captivity and released to be taken by hunters.

(2) Pheasant and chukar: year-round pursuant to 301 KAR 3.030.

Section 3. Shooting Preserve Hunting Seasons. (1) Bobwhite: August 15 through April 15.
(2) Mallard duck: year round.
(3) Hoofed animals: September 1 through May 15.
(4) Seasons for other species shall conform to those in effect where the preserve is located.

Section 4. Permits, Applications, and Transfers. (1) Without first obtaining a permit from the department, a person shall not operate:
(a) A shooting preserve for birds;
(b) A dog training area; or
(c) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.
(2) New permits shall not be issued for shooting preserves for any hoofed animals.
(3) Dog training area permits, shooting preserve permits for hoofed animals in existence prior to March 8, 2002, and shooting preserve permits for birds shall be valid from July 1 through June 30 and renewable annually.
(4) An application:
(a) Shall be made on a form supplied by the department; and
(b) For a foxhound enclosure permit shall be signed by each person having a financial interest in the preserve.
(5) The applicant for a permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting preserve or dog training area.
(6) A shooting preserve permit may be transferable if an existing and currently permitted shooting preserve is sold to a person or entity who will maintain and operate the shooting preserve.
(a) The shooting preserve permit holder who is transferring the permit shall be compliant with all provisions of the administrative regulation prior to transfer.
(b) Prior to transfer, the facility shall be inspected for compli-
field trial permit.
(3) A person observing but not participating in a field trial shall not be required to possess a hunting license.
(4) A field trial may be held throughout the year on a permitted shooting preserve or dog training area.

Section 8. Record Keeping and Reporting Requirements. (1) Shooting preserves.
(a) The permit holder shall maintain a daily record of hunting activities on the preserve showing the name, address and hunting license number of each person using the preserve.
(b) A shooting preserve operator shall obtain a receipt showing the number of game bird eggs or game birds purchased by species.
(c) A shooting preserve permit holder shall retain records and receipts for at least one (1) year.
(d) A person hunting on a shooting preserve or the shooting preserve operator shall have in his possession:
1. A bill of sale for birds released for hunting; or
2. A copy of the shooting preserve's commercial captive wildlife permit.
(2) Dog Training Areas.
(a) The permit holder shall maintain a daily record of training or field trial activities on the area showing the name, address and hunting license number of each person using the area.
(b) A dog training area permit holder shall retain records and receipts for at least one (1) year.
(c) A person training dogs on a dog training area shall have in his possession:
1. A bill of sale for bobwhite released for training; or
2. A copy of their captive wildlife permit.

Section 9. Housed Animals. (1) A shooting preserve permit holder shall not import into or release a housed animal.
(2) The permit holder shall:
(a) Keep a record of:
1. The number of each housed species taken; and
2. The name, address, hunting license number and game killed by species by each hunter.
(b) At the end of each month from September through May, submit these records to the department.
(3) A permit holder shall not import, release or hunt wild hogs, javelinas, or any member of the family Suidae.

Section 10. Foxhound Training Enclosure Requirements. (1) To qualify for a permit, a foxhound training enclosure shall be:
(a) At least 200 acres; and
(b) Fenced to enclose foxes; and
(c) Not divided by an interior fence that restrict the range of foxes to less than 200 acres.
(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:
(a) Each is at least 200 acres; and
(b) The enclosures share a common fence.
(3) The operator shall provide
(a) Proper food, water, and shelter from inclement weather for foxes within the enclosure.
(b) At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the foxes within the enclosure, preventing their capture by hounds.
(c) If a fox is held for release into an enclosure, a cage:
1. Eight (8) feet long, four (4) feet wide and six (6) feet high;
2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and
3. Containing an enclosed den box capable of housing a pair of foxes.
(d) A person shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.

Section 11. Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in the enclosure.
(2) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.
(3) A person shall not take wildlife within an enclosure except under applicable administrative regulations and license requirements.
(4) An operator shall:
(a) Allow the department to inspect his facilities; and
(b) Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.

Section 12. Revocation of Permits. (1) Revocation. A person convicted of a fish and wildlife violation including KRS Chapter 150, KAR Title 501, and federal wildlife laws shall have his permit revoked for a period of three (3) years.
(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 19B.

Section 13 Incorporation by Reference. (1) The following material is incorporated by reference.
(a) "Shooting Preserve Permit Application", 2006 [2004];
(b) "Application for Commercial Foxhound Training Enclosure Permit", 1998; [and]
(c) "Dog Training Area Permit Application", 2004; and
(d) "Shooting Preserve Permit Transfer Form", 2006.
(2) This material [These forms] may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0505.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARPS, April 16, 2006)

501 KAR 6:020. Corrections policies and procedures.
RELATES TO: KRS Chapters 195, 197, 439
NECESSITY, FUNCTION, AND CONFORMITY: KRS 195.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures, April 10 [February 15], 2006 [December 13, 2005]" are incorporated by reference. Department of Corrections Policies and Procedures includes:
[1.1] Legal Assistance for Corrections Staff (Amended 8/9/05)
[1.2] News Media (Amended 8/9/05)
[1.4] The Monitoring and Operation of Private Prisons (Amended 8/9/05)
[1.9] Institutional Duty Officer (Amended 8/9/05)
[1.14] Population Counts and Reporting Procedures (Amended 4/1/05)
[4.12] Operation of Motor Vehicles by Department of Corrections Employees (Amended 6/3/06)
2.1 Inmate Canteen (Amended 2/15/06 [10/14/05])
2.2 Warden's Fund (Amended 10/14/05)
[2-10 Surplus Property (Effective 7/28/02)]
3.1 Code of Ethics (Amended 8/9/05)
3.3 Holding of Second Jobs by Corrections' Employees (Amended 8/9/05)
[3.4 Equal Employment Opportunity - Complaint Procedure (Amended 8/9/05)]
3.5 Sexual Harassment and Anti-Harassment (Amended 8/9/05)
[3.6 Background Investigation and Employment of Ex-offenders (Amended 4/14/05)]
[3.7 Shift, Post, and Days Off Assignment (Amended 8/9/05)]
3.10 Appearance and Dress for Nonuniformed Staff (Amended 11/1/04)
3.11 Drug Free Workplace Employee Drug Testing (Amended 8/9/05)
3.17 Uniformed Employee Dress Code (Amended 4/10/05)
[3.18 Institutional Staff Housing (Amended 8/9/05)]
[3.19 Employee Health Issues (Amended 4/12/05)]
[3.20 Employee Health Issues (Amended 6/3/05)]
[3.21 Staff Sexual Misconduct (Amended 6/9/05)]
[3.22 Staff Sexual Misconduct (Amended 6/9/05)]
[4.4 Firearms and Chemical Agents Training (Amended 4/14/05)]
[4.7 Uniformed Employee Dress Code (Amended 6/3/05)]
5.1 Research and Survey Projects (Amended 8/9/05)
5.2 Open Records Law (Amended 8/9/05)
[6.5 E-mail and Internet Use (Amended 8/9/05)]
[7.2 Ailments-Retirement (Amended 8/9/05)]
8.2 Fire Safety (Amended 2/15/05) [Effective 2/15/04]
8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
9 4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)
9.5 Execution (Amended 9/20/05)
9.6 Contraband (Amended 12/13/05)
9.8 Search Policy (Amended 12/13/05)
9.18 Informants (Amended 10/14/05)
9.19 Found Lost or Abandoned Property (Amended 10/14/05)
9.20 Electronic Detection Equipment (Amended 10/14/05)
10.2 Special Management Inmates (Amended 11/9/04)
10.3 Safekeepers and Contract Prisoners (Amended 9/15/05)
11.2 Nutritional Adequacy of Inmate Diet (Amended 8/9/05)
11.4 Alternative Dietary Patterns (Amended 6/5/05)
13.1 Pharmacy Policy and Formulary (Amended 10/14/05)
13.2 Health Maintenance Services (Amended 10/14/05)
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Amended 4/12/05)
13.6 Sex Offender Treatment Program (Amended 8/9/05)
13.7 Voluntary Psychiatric Medication (Amended 10/14/05)
13.8 Substance Abuse Treatment Program (Effective 12/17/98)
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 12/13/05)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 10/14/05)
14.3 Marriage of Inmates (Amended 10/14/05)
14.4 Legal Services Program (Amended 2/13/04)
14.5 Board of Claims (Amended 10/14/05)
14.6 Inmate Grievance Procedure (Amended 10/14/05)
14.7 Sexual Assault Prevention and Intervention Programs (Amended 10/14/05)
15.1 Hair, Grooming and ID Card Standards (Amended 12/13/05)
15.2 Rule Violations and Penalties (Amended 2/15/06 [10/4/06])
15.3 Mental Health (Amended 12/13/05)
15.5 Restorative Justice (Amended 10/14/05)
15.5 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restrictions (Amended 12/13/05)
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 10/14/05)
16.2 Inmate Correspondence (Amended 10/14/05)
16.3 Inmate Access to Telephones (Amended 6/3/05)
16.4 Inmate Packages (Amended 8/9/05)
16.7 Inmate Personal Property (Amended 2/15/05 [6/3/06])
17.2 Assessment Center Operations (Amended 4/15/03)
17.3 Controlled Intake of Inmates (Amended 1/12/05)
17.4 Administrative Remands: Sentence Calculations (Amended 4/10/06 [2/4/04])
18.1 Classification of the Inmate (Amended 10/14/05)
18.2 Central Office Classification Committee (Amended 10/14/05)
18.5 Custody and Security Guidelines (Amended 10/14/05)
18.7 Transfers (Amended 10/14/05)
18.9 Out-of-State Transfers (Amended 2/15/06) [Effective 4/5/05]
18.11 Placement for Mental Health Treatment in CPTU or KCPC (Amended 2/15/06) [Effective 12/14/04]
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06) [Effective 12/13/00]
18.13 Population Categories (Effective 8/15/01)
18.14 Protective Custody (Amended 1/12/05)
18.16 Information to the Parole Board (Effective 12/19/01)
18.17 Interstate Agreement on Detainers (Effective 2/17/85)
18.18 International Transfer of Inmates (Effective 8/15/01)
19.1 Governmental Services Program (Amended 2/15/05 [4/15/03])
19.2 Sentence Credit for Work (Amended 2/13/04)
19.3 Inmate Wage/Times Credit Program (Amended 10/14/05)
20.1 Educational Programs and Educational Good Time (Amended 4/10/06 [2/15/06]) [Effective 4/16/03]
22.1 Privilege Tapes (Amended 10/14/05)
23.1 Religious Programs (Amended 10/14/05)
25.1 Gratuities (Effective 7/28/92)
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Parole Program (Effective 7/28/92)
25.4 Institutional Inmate Furloughs (Amended 10/14/05)
25.6 Community Center Program (Effective 12/19/01)
25.8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Amended 10/14/05)
25.11 Victim Notification (Amended 10/14/05)
26.1 Citizen Involvement and Volunteer Service Program (Amended 10/14/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Correction, PO Box 2400, Frankfort, Kentucky 40623-2400, phone (502) 584-2024, fax (502) 584-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: February 15, 2006
FILED WITH LRC: February 15, 2006 at 11 a.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, PO Box 2400, Frankfort, Kentucky 40623-2400, phone (502) 584-2024, fax (502) 584-6494, ext. 336 or 333, fax (502) 564-5229.

JUSTICE AND PUBLIC SAFETY
Department of State Police
Forensic Laboratory System
(As Amended at ARS, April 13, 2006)


RELATES TO: KRS 17.170, 17.171, 17.172, 17.173, 17.174, 17.175

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.170, 17.175 [17.170, 17.175, 17.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 requires [sections] the Kentucky State Police to promulgate admin-
VOLUME 32, NUMBER 11 – MAY 1, 2006

Section 1. Definitions. (1) *Biological sample* means any part of the human body from which a person's DNA profile may be extracted such as [the may include, but is not limited to] blood, hair, saliva, tissue, or bone.

(2) *Blood sample* means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(3) *DJJ* means the Department of Juvenile Justice.

(4) *DNA* means deoxyribonucleic acid.

(5) *DNA database* means the database maintained by the Kentucky State Police which contains the DNA profiles for qualifying offenders, convicted forensic specimens, missing persons, and close relatives of missing persons as authorized by KRS 17.175

(6) *DNA profile* means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person.

(7) *DNA sample* means a biological sample collected for DNA identification purposes.

(8) *DOC* means the Department of Corrections.

(9) *Evidentiary item* means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(10) *FBI* means the Federal Bureau of Investigation.

(11) *KSP* means the Kentucky State Police.

(12) *KSP Central Lab* means the Kentucky State Police Central Forensic Laboratory.

(13) *Offender DNA collection kit* means a package of materials obtained from the KSP Central Lab for the purpose of collecting a blood sample from a qualifying offender by either hypodermic needle extraction or finger prick lancet for the purpose of obtaining a DNA profile.

(14) *Qualifying offender* means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(9), DNA samples shall be collected by DOC and DJJ from qualifying offenders in a medically-approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist.

(2) In accordance with KRS 17.170(2), KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall contain a vacutainer tube containing EDTA preservative for obtaining a drawn blood sample by hypodermic needle extraction, or the collection materials necessary to obtain a blood sample by a finger stick lancet procedure. Each offender DNA collection kit shall be secured in protective wrapping material in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)", KSP Form No. 47 (Revised 5/03). Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A (First Edition 01/06). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample on one (1) side of the form. The other side of the form DNA Collection Kit Information Sheet shall be completed with biographical and offense-related information concerning the offender, and shall have space for the qualifying offender's left and right fingerprints. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the blood sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender.

(4) Immediately following collection of a blood sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP Request For Examination, KSP Form No. 28 Revised 3/01.

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a blood sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples From Unidentified Bodies for Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 28.

(2) If practical, the biological sample may be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection Of DNA Samples From Crime Scenes For Inclusion In DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 28.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.


Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' "DNA Database Manual" (Revised January 9, 2006).
Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Offender DNA Collection Kit Information Sheet (blood tube method)," KSP Form No. 47, [[Revised 5/03]];
(b) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)," KSP Form No. 47-A, [[First Edition 1/06]];
(c) "KSP Request For Examination, KSP Form No. 26, [[Revised 3/01]];
(e) KSP Forensic Laboratories' Operations Manual, Section 9-9 "Proficiency Testing Program," [[Revised July 1, 2003]];
(f) KSP Forensic Laboratories' Operations Manual, Section 9-12 "Proficiency testing - Confidentiality," [[Revised July 1, 2003]];
and
(g) KSP Forensic Laboratories' "DNA Database Manual," [[Revised January 9, 2006]].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN B. PENCE, Lt Governor, Secretary
MARK MILLER, Commissioner
APPROVED BY AGENCY: January 13, 2006
FILED WITH LRC: January 25, 2006 at 10 a.m.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Juvenile Services in Community
(As Amended at ARRS, April 13, 2006)


RELATES TO: KRS 15A.065, 15A.067, 200.060-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.060, 600.150, 635.095, 635.100(7), 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 200.060, 600.150, 635.095, 635.100, 640.120 and 645.250 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", April 12, [March 15], 2006 [2009], is incorporated by reference and includes the following:

600 Initial Contact and Court Support (Amended 12/15/05)
601 Case Registration and Case Management (Amended 12/15/05)
602 Service Complaints (Amended 12/15/05)
603 Child's Benefits (Amended 12/15/05)
603.1 Title IV-E: Federal Foster Care Maintenance Payments (Amended 12/15/05)
603.2 Trust Funds (Amended 12/15/05)
604 Individual Treatment Plans (Amended 12/15/05)
605 Juvenile Service Case Records (Amended 2/15/06/12/15/05)
605.1 Running Records (Amended 12/15/05)
605.2 Critical Incident Reports (Amended 12/15/05)
606 Transportation of Committed Youth (Amended 12/15/05)

607 Probation (Amended 12/15/05)
607.1 Revocation of Probation (Amended 12/15/05)
607.2 Termination of Probation (Amended 3/15/06/12/15/05)
608 Youthful Offender Shock Probation (Amended 12/15/05)
609 Referral for Out-of-Home Placement (Amended 12/15/05)
609.1 Youth Awaiting Out-of-Home Placement (Amended 12/15/05)
609.2 Services to Youth in Out-of-Home Placement (Amended 4/12/06/24/5/06/12/15/05)
610 Authorized Leave for Youth in Out-of-Home Placement (Amended 4/12/06/24/5/06/12/15/05)
610.1 Youth AWOL/Escape (Amended 3/15/06/12/15/05)
611 Mental Health Services (Amended 12/15/05)
611.1 Mental Health Emergencies (Amended 12/15/05)
617 Community Supervision (Amended 12/15/05)
617.1 Intensive Aftercare Program (Amended 12/15/05)
618 Juvenile Intensive Supervision Team (JIST) (Amended 12/15/05)
620 Supervised Placement Revocation (Amended 12/15/05)
621 Searches (Amended 12/15/05)
626 Sex Offender Treatment (Amended 3/15/06/12/15/05)
629 Administrative Discharge from Commitment (Amended 3/15/06/12/15/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIDGET SKAGGS BROWN, Commissioner
APPROVED BY AGENCY: March 14, 2006
FILED WITH LRC: March 15, 2006 at 10 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, April 13, 2006)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance, KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. KRS 158.060 defines the school day and month and make-up of school days missed. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:

(a) Establish the opening and closing dates of the school term;
(b) Establish beginning and ending dates of each school month;
(c) State the number of days of instruction;
(d) Establish the minimum length of the instructional day;
(e) State the instructional time the local board of education
requires for kindergarten if in excess of the minimum three (3) hours of instruction;

(f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and

(g) Designate days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction;

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), parent or legal guardian signature (for elementary students who are signed out) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 159.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 4(3), grades for that class or block is passing or above;

(d) The pupil's mental or physical condition prevents or renders undue absence in attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in a home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(f) The student has an individual education plan (IEP) that requires less than full-time instructional services.

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 4(2)(b) and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section 4(1). A student may be counted in attendance for performance-based credit for a class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 4(3); or [2]
(h) The pupil participates in a school that is authorized by the Commissioner of Education to design and deliver an educational program so that all graduation requirements are based on student proficiency of standards and performance, rather than time and Carnegie units, as authorized in K 745 KAR 3:030, Section 4.

(5) Even if a pupil’s absence or tardy is due to factors beyond the pupil’s control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 8. [(1)](1) The guidelines in this subsection shall be used to calculate student attendance for state funding purposes through June 30, 2006.

(a) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for the pupil’s grade level.

(b) A tardy shall be recorded for a pupil who is absent five to thirty-five days (5-35) percent of the regularly scheduled school day for the pupil’s grade level.

(c) A pupil who is absent thirty-one to sixty-four days (31-64) percent of the regularly scheduled school day for the pupil’s grade level.

(d) A pupil who is absent thirty-six to seventy days (36-70) percent of the regularly scheduled school day for the pupil’s grade level.

(e) A pupil who is absent thirty-one to sixty-four days (31-64) percent of the regularly scheduled school day for the pupil’s grade level.

(f) The percentages described in this section shall apply to the regularly scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

(2) Beginning July 1, 2006.] The guidelines in this subsection shall be used to calculate student attendance for state funding purposes.

(1) [(a)](a) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for the pupil’s grade level.

(b) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly scheduled school day for the pupil’s grade level.

(c) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly scheduled school day for the pupil’s grade level.

(d) A full day absence shall be recorded for a pupil who is absent 10 percent of the regularly scheduled school day for the pupil’s grade level.

(e) The percentages described in this subsection shall apply to the regularly scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 9. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district’s average daily attendance.

Section 10. A local board of education may permit an arrangement in which a pupil pursues part of the student’s education under the direction and control of one (1) public school and part of the student’s education under the direction and control of another public or nonpublic school. The time a student is served by public school shall be included when calculating the district’s average daily attendance.

Section 11. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 12. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district’s average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district’s average daily attendance except under the following conditions:

(a) The local board of education shall have first determined that the student is eligible for enrollment into the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:
   1. Anecdotal records;
   2. A variety of student work samples, including evidence of student self-reflection; and
   3. Standardized test results;

(b) The team shall be [sic] comprised of three (3) members who have knowledge of the student’s developmental skills and abilities. Team members shall be chosen from these categories:
   1. Teachers;
   2. Parents;
   3. Psychologists;
   4. Principals; or
   5. District specialists;

(c) At least one (1) team member shall represent [represents] the district office and have [has] an understanding of early childhood development and knowledge of developmentally-appropriate practices and

(d) If a student is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval with:
   1. A list of data sources used in making the decision;
   2. A list of all individuals who submitted the data sources;
   3. A list of team members; and
   4. The data needed to create a pupil attendance record.

(2) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student’s 21st birthday shall not be included in the calculation of the district’s average daily attendance.

Section 13. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

Section 14. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.360(4) shall be submitted to the Department of Education no later than February 1 of the year prior to the school year to which it will apply. The written agreement shall include the specific terms to which the districts have agreed. A list of the names of all nonresident pupils enrolled in the district covered by the agreement shall be submitted to the Department of Education no later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education no later than June 30 of each year.

Section 15. The superintendent’s annual attendance report (SAAR) shall be considered the request to substitute prior year’s average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to
inclement weather shall be retained at the central office.

Section 16. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified personnel within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 17. (1) The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils until June 30, 2006:

(a) E01 — A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
(b) E02 — A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;
(c) E03 — A pupil enrolling for the first time during the current school year in either a public or nonpublic school who has withdrawn as a W06, W07, W12, W16 or W18 during the previous school year;
(d) R01 — A pupil received from another homeroom in the same school;
(e) R02 — A pupil received from another public school in the same public school district;
(f) R03 — A pupil received from a nonpublic school in the same public school district;
(g) R04 — A pupil received from a public school in Kentucky outside the public school district;
(h) R05 — A pupil received from a nonpublic school in Kentucky outside the public school district;
(i) R06 — A pupil transferred to another school during the intervening period;
(j) R07 — A pupil received from a school in another state who has not enrolled during the current school year in Kentucky as an E01, E02, or E03;
(k) R10 — An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;
(l) R11 — An expelled pupil received in the current school year from a regional alternative facility run by the expelling school district, prior to the completion of the expulsion period;
(m) W01 — A pupil transferred from another homeroom in the same school. The reentry code to use with W01 shall be R01;
(n) W02 — A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(o) W03 — A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;
(p) W04 — A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R06, or R07;
(q) W05 — A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R06, or R07;
(r) W06 — A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has dropped out. The reentry code to use with W06 shall be R06;
(s) W07 — A pupil withdrawn due to death, mental illness, or any other health-related condition for which the student is no longer able to participate in regular school attendance or local homebound instructional services, or if the student has not obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;
(t) W08 — A pupil withdrawn due to death;
(u) W09 — A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or years;
(v) W10 — A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be:
1. R05, if the student returns to the expelling local school district in the current school year after the expulsion period has been completed, or
2. R10, if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;
(w) W11 — A pupil who has been expelled for behavioral reasons and withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be:
1. R06, if the student, after the expulsion period has ended, returns during the current school year;
2. R15, if the student returns in the current school-year prior to completion of the expulsion period;
(x) W12 — A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
(y) W13 — A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R06;
(z) W16 — A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments, for accountability purposes, the reentry code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in the or any other public district at the beginning of the current school year;
(aa) W17 — An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704-KAR 6:060, and
(bb) W18 — A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

(2) Beginning July 1, 2006: The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) (a) E01 — A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
(b) E02 — A pupil previously enrolled during the current school year in either a public or nonpublic school in another state, who has not previously enrolled in Kentucky during the current school year;
(c) E03 — A pupil enrolling for the first time during the current school year in either a public or nonpublic school who has withdrawn as a W06, W07, W12, W16 or W18 during the previous school year;
(d) R01 — A pupil received from another homeroom in the same school;
(e) R02 — A pupil received from another public school in the same public school district;
(f) R03 — A pupil received from a nonpublic school in the same public school district;
(g) R04 — A pupil received from a public school in Kentucky outside the public school district;
(h) R05 — A pupil received from a nonpublic school in Kentucky outside the public school district;
(i) R06 — A pupil receiving the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;
(j) R07 — A pupil received from a school in another state, who has not enrolled during the current school year in Kentucky as an E01, E02, or E03;
(k) R10 — An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;
(l) R11 — An expelled pupil received in the current school year, from a regional alternative facility run by the expelling school district, prior to the completion of the expulsion period;
(m) W01 — A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;
(n) W02 — A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(o) W03 — A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;
(p) W04 — A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R06, or R07;
(q) W05 — A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R06, or R07;
(r) W06 — A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has dropped out. The reentry code to use with W06 shall be R06;
(s) W07 — A pupil withdrawn due to death, mental illness, or any other health-related condition for which the student is no longer able to participate in regular school attendance or local homebound instructional services, or if the student has not obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;
(t) W08 — A pupil withdrawn due to death;
(u) W09 — A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or years;
(v) W10 — A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be:
1. R05, if the student returns to the expelling local school district in the current school year after the expulsion period has been completed, or
2. R10, if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;
(w) W11 — A pupil who has been expelled for behavioral reasons and withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be:
1. R06, if the student, after the expulsion period has ended, returns during the current school year;
2. R15, if the student returns in the current school-year prior to completion of the expulsion period;
(x) W12 — A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
(y) W13 — A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R06;
(z) W16 — A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments, for accountability purposes, the reentry code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in the or any other public school district at the beginning of the current school year;
(aa) W17 — An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704-KAR 6:060, and
(bb) W18 — A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

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(10) [6] W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02.

(11) A pupil withdrawn due to those communicable medical conditions that pose a threat to school environments listed in 902 KAR 2:020. Section (11), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06.

(12) W05 - A pupil withdrawn due to health.

(13) W09 - A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or year.

(14) [6] W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court.

(15) W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5.060.

(16) [6] W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R06.


(18) [6] W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States.

(19) [6] W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year.

(20) [6] W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated.

(21) [6] W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school.

(22) [6] W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate, and

(23) [6] W27 - a student who has withdrawn from school and subsequently received a GED.

Section 18. (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended. The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and
(b) N - Suspension from school for one half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 19. The following ethnic codes shall be used to indicate the ethnic group of pupils:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;
(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;
(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;
(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identity through tribal affiliation or community recognition; and
(6) 6 - Other.

Section 20. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report no later than June 30 of each year.

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Growth Factor Report", June 2004;
(b) "Superintendent's Annual Attendance Report", June 2004; and
(c) "Student Dropout Questionnaire", December 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: January 9, 2006
FILED WITH LRC: February 9, 2006 at noon
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, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4358, fax (502) 564-9321.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(As Amended at ARRS, April 13, 2006)

806 KAR 5:310. Viatical settlement broker license and notification.

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725, 2006 Ky. Acts ch. 54

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.15-700(2)(a), (b) [3], 304.15-720, 2006 Ky. Acts ch. 54

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-700(2)(a) [3] requires the executive director [commissioner] to promulgate administrative regulations to provide for the licensing of viatical settlement brokers and the termination or revocation of the license. KRS 304.15-720 authorizes the executive director [commissioner] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720 and to establish appropriate requirements and fees for a viatical settlement broker license and for notifying the executive director that an individual licensed as a life insurance agent is acting as a viatical settlement broker. This administrative regulation establishes the information to be included in the application for, the requirements for the issuance and continuation of, and the fees for a viatical settlement broker license and notification.

Section 1. Definitions. (1) "Executive director" is defined in KRS 304.1-050(1) [means the Executive Director of the Office of Insurance].
(2) "Office" is defined in KRS 304.1-050(2) [means the Office of Insurance].
(3) [Declaration.] "Viable settlement broker" is defined in KRS 304.15-020(3) [(4)].

Section 2. Individual Applicant. (1) An individual may be issued a viatical settlement broker license if the executive director [commissioner] determines that the applicant:
(a) is at least twenty-one (21) years of age;
(b) has successfully attained a general educational development equivalent to that required for graduation from an accredited high school in Kentucky;
(c) has completed a forty (40) hour viatical prelicensing [training] course of study, which has been approved by the executive director [commissioner] in accordance with 806 KAR 9-001; and
(d) has passed a viatical examination in accordance with 806 KAR 9-070.

(d) Submits:
1. Electronically, a completed Individual Uniform Application prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.licenseregistry.com; or
2. Form 8301, Incorporated by reference in 806 KAR 9-340;
(a) Submits Form 8301-BGC, Incorporated by reference in 806 KAR 9-340;
(b) Remits the nonrefundable fee of $250;
(c) Submits Form CPI-01, Incorporated by reference in 806 KAR 9-340;
(d) Provides proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9-210, and
(e) If using an assumed name, provides certified copies of certificates required in accordance with KRS 385.015.

(2) An individual notifying the executive director that he or she is acting as a viatical settlement broker in accordance with KRS 304.15-700(2)(b) shall:
(a) Be exempt from the prelicensing course of study required by subsection (1)(b) and the examination required by subsection (1)(c) of this section;
(b) Submit electronically, a completed Individual Uniform Notification prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.licenseregistry.com;
(c) Remit the nonrefundable fee of $250;
(d) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(2)(d) and in accordance with 806 KAR 9-210, and
(e) If using an assumed name, provide certified copies of certificates required in accordance with KRS 385.015 [An individual who holds or has held an agent-license with a life line of authority for at least the [within] twelve (12) months prior to the date of this application for a viatical settlement broker-license shall be exempt from the life-insurance portion of the course of study required by subsection (4)(b) [(4)(e)] of this section].

(3) An individual notifying the executive director that he or she is acting as a viatical settlement broker in accordance with KRS 304.15-700(2)(b) shall:
(a) Be exempt from the prelicensing course of study required by subsection (1)(b) [(4)(e)] of this section;
(b) Submit completed Form 8301, as prescribed in 806 KAR 9-340; [(5)];
(c) Submit Form 8301-BGC, as prescribed in 806 KAR 9-340;
(d) Remit the nonrefundable fee of $250;
(e) Submit Form CPI-01, as prescribed in 806 KAR 9-340;
(f) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) [(4)] and in accordance with 806 KAR 9-210, and
(g) [Provide the following documentation, as applicable:]
1. Documentation supporting the applicant's answers on the application;
2. If using an assumed name, certified copies of certificates required in accordance with KRS 385.015 [An individual who holds or has held an agent-license with a life line of authority for at least the [within] twelve (12) months prior to the date of this application for a viatical settlement broker-license shall be exempt from the life-insurance portion of the course of study required by subsection (4)(b) [(4)(e)] of this section].

Section 3. Business Entity Applicant. (1) A business entity may be issued a viatical settlement broker license if the executive director [commissioner] determines the applicant has designated only individual acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.

(a) Submit:
1. Electronically, a Uniform Business Entity Application prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.licenseregistry.com; or
2. Form 8301 - BE, Incorporated by reference in 806 KAR 9-340 [(completed Form 8301-BE with Form 8305, as prescribed in 806 KAR 9-340) [(5)];
(b) Remit the nonrefundable fee of $750;
(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(2) [(4)] and in accordance with 806 KAR 9-210, and
(d) Provide the following documentation, as applicable:
1. Articles of incorporation, articles of organization, partnership agreement, or certificate of authority from the Kentucky Secretary of State;
2. Documentation supporting the applicant's answers on the application; and
3. If using an assumed name, certified copies of certificates required in accordance with KRS 385.015 [An individual who holds or has held an agent-license with a life line of authority for at least the [within] twelve (12) months prior to the date of this application for a viatical settlement broker-license shall be exempt from the life-insurance portion of the course of study required by subsection (4)(b) [(4)(e)] of this section].

(2) A [Except for the changes requiring prior notification under KRS 304.15-700(2)(b)]. [The] licensed viatical settlement broker and an insurance agent authorized to operate as a viatical settlement broker in accordance with KRS 304.15-700(2)(b) and Section 2(2) of this administrative regulation shall notify the Office [Department] of Insurance in writing within thirty (30) days of any change to the information in the application, notification, or in the documents required to be submitted in accordance with Sec. 2 or 3 of this administrative regulation.

Section 4. Renewal and Continuation of License. (1) Each viatical settlement broker license shall continue in force and renew in accordance with KRS 304.9-260. The renewal fee shall be nonrefundable and in the amount as follows:
(a) $250 for an individual licensee; or
(b) $750 for a business entity licensee.

(2) A renewal application for a viatical settlement broker license shall:
(a) Be filed together with the renewal fee of $250;
(b) Be filed together with the renewal fee of $750;
(c) Be filed together with the renewal fee of $250;
(d) Be filed together with the renewal fee of $750;
(e) Be filed together with the renewal fee of $250;
(f) Be filed together with the renewal fee of $750;
(g) Be filed together with the renewal fee of $250;
(h) Be filed together with the renewal fee of $750.
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Section 3. Kentucky Access Health Benefit Plan Riders. (1) Kentucky Access shall offer the following optional riders to the health benefit plans established in Section 2 of this administrative regulation:
(a) Pharmacy rider; and
(b) Mental health rider.
(2) The pharmacy rider shall include a copayment amount as listed in HIPMC-KAR-1, [006-02];
(3) The mental health rider shall include a copayment amount as listed in HIPMC-KAR-2, [012-00].

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Traditional Access Plan Benefit Summary HIPMC-KAP-1," [001-06];
(b) "Premier Access Plan Benefit Summary HIPMC-KAP-2", [001-06];
(c) "Preferred Access Plan Benefit Summary HIPMC-KAP-3", [001-06];
(d) "Pharmacy Rider Benefit Summary HIPMC-KAR-1", [006-02]; and
(e) "Mental Health Rider Benefit Summary HIPMC-KAR-2", [012-00].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.].

ENVELOPMENT AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARR, April 13, 2006)


RELATES TO: KRS 304.17A-005(26)[25], 304.17A-132, 304.17A-134, 304.17A-139, 304.17B-001, 304.17B-033, 304.17B-031, 304.17B-033

STATUTORY AUTHORITY: KRS 304.2-111(1), 304.17B-031

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-111(1) authorizes the executive director [commissioner] to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17B-031(1) requires the office [department] to promulgate administrative regulations necessary to carry out provisions of KRS 304.17B [regarding Kentucky Access]. This administrative regulation establishes health benefit plan requirements for Kentucky Access.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.
(2) "Health benefit plan" is defined in KRS 304.17A-005 [304.17B-033];
(3) "Kentucky Access" is defined in KRS 304.17B-001(17);
(4) "PPO" means a preferred provider organization product type;
(5) "Rider" means an endorsement to a health benefit plan that modifies clauses and provisions of the health benefit plan, including or excluding coverage, in the manner set forth in the rider;
(6) "Standard health benefit plan" is defined by KRS 304.17B-001(25).

Section 2. Kentucky Access Health Benefit Plans. (1) Kentucky Access shall offer the following three (3) health benefit plans in accordance with KRS 304.17B-019:
(a) Traditional access (FFS) plan;
(b) Premier access (PPO) plan; and
(c) Preferred access (PPO) plan.
(2) The traditional access (FFS) plan shall include the benefits, and be subject to the deductible and coinsurance amounts listed in HIPMC-KAP-1, [001-06][149-02];
(3) The premier access (PPO) plan shall include the benefits, and be subject to the deductible and coinsurance amounts listed in HIPMC-KAP-2, [001-06][149-02]; and
(4) The preferred access (PPO) plan shall include the benefits, and be subject to the deductible and coinsurance amounts listed in HIPMC-KAP-3, [001-06][149-02].

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Traditional Access Plan Benefit Summary HIPMC-KAP-1," [001-06][149-02];
(b) "Premier Access Plan Benefit Summary HIPMC-KAP-2", [001-06][149-02];
(c) "Preferred Access Plan Benefit Summary HIPMC-KAP-3", [001-06][149-02];
(d) "Pharmacy Rider Benefit Summary HIPMC-KAR-1", [006-02]; and
(e) "Mental Health Rider Benefit Summary HIPMC-KAR-2", [012-00].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]. Forms may also be obtained on the office [department's-intranet] Web site at http://docs.cpr.ky.gov/kentucky/ [www.delsafe.ky.us].

R. GLENN JENNINGS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJJUNA S. WILCHER, Secretary
APPROVED BY AGENCY: February 10, 2006
FILED WITH LRC: February 10, 2006 at 2 p.m.
CONTACT PERSON: Melea Kelch, 215 West Main Street,
P.O. Box 517 Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

ENVELOPMENT AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Financial Institutions
(As Amended at ARR, April 13, 2006)

808 KAR 10:010. Forms for application, registration[i] notice filing[i] reporting and compliance.

STATUTORY AUTHORITY: KRS 292.327(1), 292.330(2), (3), (10), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q)
NEXCESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.330(2), (3), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1)(2) [-1998 Ky.-Acts ch. 20, sec. 11];
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.330(2), (3), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1)(2) [-1998 Ky.-Acts ch. 20, sec. 11];
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.330(2), (3), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1)(2) [-1998 Ky.-Acts ch. 20, sec. 11];
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.330(2), (3), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1)(2) [-1998 Ky.-Acts ch. 20, sec. 11];
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327(1), 292.330(2), (3), (10), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), and 292.430(1)(2) [-1998 Ky.-Acts ch. 20, sec. 11];
(a) Register as an [a-broker-dealer] agent or an investment advisor representative in Kentucky; or
(b) Transfer an [a-broker-dealer] agent’s or representative’s registration to another broker-dealer, issuer, or investment adviser.
(3) Pursuant to KRS 292.330(10) [(i)], Form 33-e-1, Application for Renewal of Issuer Agent Registration [Agent], shall be completed to renew registration as an issuer agent in Kentucky.
(4) Pursuant to KRS 292.330(1) and (2), Form ADV, Uniform Application for [Registration-of-an] Investment Adviser Registration, [including-Schedule-L] shall be completed to register or notice file as an investment adviser or covered adviser in Kentucky.
(5) Pursuant to KRS 292.330(10) [(i)], Form 33-h-1, Application for Renewal of Investment Adviser and Representative Registration [Adviser-Licenses], shall be completed to renew registration as an investment adviser in Kentucky.
(6) Pursuant to KRS 292.350(2), Form 29-a, Application for Registration by Notification (Nonissuer Distribution), shall be completed to register a security for sale in Kentucky by notification.
(7) Pursuant to KRS 292.350(2), 292.360(2), 292.380(2), and 808 KAR 10.280, Section 2(1), Form U-1, Uniform Application to Register Securities [Coordination, Qualification or Notification], shall be completed to register a security for sale in Kentucky by coordination, qualification, notification, or as a small corporate offering.
(8) Pursuant to KRS 292.410(1)(d), 808 KAR 10.210, Section 1(b)(1), and 808 KAR 10.280, Section 2(1), Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or [a] and/or Uniform Limited Offering Exemption, shall be completed to:
(a) File for an exemption from the registration of a security under KRS 292.410(1)(q); or
(b) Register an offering under 808 KAR 10.280, Section 2(1).
(9) [(i)] Pursuant to KRS 292.430(1) and (2), Form U-2, Uniform Form Application to Service of Process [Investment Adviser, Broker-Dealer, or Issuer], shall be completed by an issuer required to file a consent to service of process [to register as an investment adviser, broker-dealer, or issuer in Kentucky].
(10) [(ii)] Pursuant to KRS 292.330(3), [e], 292.350(3), (2), and 292.370(2)(a), Form U-2A, Uniform Form of Corporate Resolution [Investment Adviser, Broker-Dealer, or Issuer], shall be completed to:
(a) Register as a broker-dealer or an investment adviser; or
(b) Register a security for sale by an issuer in Kentucky.
(11) [(i)] Pursuant to KRS 292.330(1)(e), Form BWB, Uniform Request for Notice of - Broker-Dealer Withdrawal, shall be completed if a broker-dealer withdrawal his registration in Kentucky.
(12) [(ii)] Pursuant to 808 KAR 10.280, Form U-7, Small Company Offering [Corporate- Offerings] Registration, shall be completed by a company who:
(a) Meets the eligibility requirements established in that administrative regulation; and
(b) Wants to register an offering pursuant to that administrative regulation.
(13) Pursuant to KRS 292.330(13)(a), Form U-5, Uniform Termination Notice for Securities Industry Registration, shall be completed to terminate registration as an agent or investment adviser registration.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form BD, Uniform Application for Broker-Dealer Registration, revised July 1999;
(b) Form U-4, Uniform Application for Securities Industry Registration or Transfer, revised October 2005;
(c) Form 33-e-1, Application for renewal of Issuer Agent Registration, revised May 2002;
(d) Form ADV, Uniform Application for Investment Adviser Registration, revised January 2008;
(e) Form 33-h-1, Application for Renewal of Investment Adviser and Representative Registration, revised May 2002;
(f) Form U-1, Uniform Application to Register Securities, revised July 1999;
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Financial Institutions
(As Amended by ARRS, April 13, 2006)


RELATES TO: KRS 292.330(6), (7), (12)(f), 7 U.S.C. 6f
(292.330(11)(f)) (7)

STATUTORY AUTHORITY: KRS 292.330(6), (7), (12)(f),
292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the executive director [commissioner] to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(6) authorizes the executive director [commissioner] to require a minimum net liquid capital for investment advisers. KRS 292.330(7) authorizes the executive director [commissioner] to require an Investment adviser to post a surety bond in an amount up to $25,000 and to determine the conditions of the bond. KRS 292.330(12)(f) authorizes the executive director [commissioner] to promulgate rules for the conduct of business by investment advisers. This administrative regulation establishes the requirements for minimum liquid capitalization and bonding for an investment adviser.

Section 1. Definitions. (1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to appropriate them or obtain possession, in accordance with the requirements established in Section 2 of this administrative regulation. Custody includes:

(a) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three (3) business days of receiving them;

(b) Placement of client funds or securities in accounts made payable to unrelated third parties unless forwarded to the third party within twenty-four (24) hours of receipt and the adviser maintains appropriate records to document the preceding;

(c) Any arrangement, including but not limited to, a general power of attorney, under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian. However, custody shall not include an arrangement for direct deduction of fees from client accounts held with a qualified custodian if the adviser provides the following safeguards:

1. The adviser has written authorization from the client to deduct advisory fees from the account;

2. Each time a fee is directly deducted from a client account, the adviser concurrently:

(a) Sends the qualified custodian notice of the amount of the fee to be deducted, and

(b) Sends the client an invoice itemizing the fee, including the formula used to calculate the fee, the amount of assets under management that the fee is based on, and the time period covered by the fee;

(d) Any capacity that gives the adviser access or legal ownership to client funds or securities. Such capacity shall include, but not limited to, general partner of a limited partnership, managing partner of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust;

(2) "Independent party" means a person that:

(a) Is engaged by the adviser to act as the gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(b) Does not control and is not controlled by and is not under common control with the adviser; and

(c) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser;

(3) "Independent representative" means a person who:

(a) Acts as an agent for an advisory client; or

(4) For a pooled investment vehicle;

(a) Acts as an agent for the limited partners of a limited partnership, for members of a limited liability company or for other beneficial owners of another type of pooled investment vehicle; and

(b) In the case of a pooled investment vehicle, acts as an agent for limited partners of a limited partnership, for members of a limited liability company, or for other beneficial owners of another type of pooled investment vehicle, and by law or contract is obligated to act in the best interests of the advisory client or the limited partners, members, or other beneficial owners;

(c) Does not control, is not controlled by, and is not under common control with the adviser; and

(d) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser.

(4) "Net worth" means an excess of assets over liabilities as determined by generally-accepted accounting principles, but shall not include as assets:

(a) Deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense or any other intangible asset;

(b) Home, home furnishings, automobiles, and any other items not readily marketable. If, in the case of an individual:

(c) Advances or loans to stockholders or officers or related parties of stockholders or officers. If, in the case of a corporation:

(d) Advances or loans to partners or related partners of partners. If, in the case of a partnership:

(5) "Qualified custodian" means any of the following institutions or entities not controlling and not controlled by, nor under common control with, the adviser:

(a) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation;

(b) A registered broker-dealer holding the client assets in customer accounts;

(c) A registered futures commission merchant under 7 U.S.C. 6(a)(4) (Section 4(a) of the Commodity Exchange Act, holding the client funds in customer accounts, but only with respect to client funds and futures contracts in those accounts or other securities incidental to transactions in the purchase or sale of a commodity for future delivery or options thereon; and

(d) A foreign financial institution that customarily holds financial assets for its customers, if [reserved] that the foreign financial institution keeps the advisory client’s assets in customer accounts segregated from the institution’s proprietary assets;

Section 2. Custody Standards. (1) Custody shall include:

(a) Possession of client funds or securities unless the funds or securities are:

1. Received inadvertently; and

2. Returned to the sender promptly, within three (3) business days of the receipt of the funds or securities;

(b) Receipt of a check drawn by a client and made payable to an unrelated third party;

1. The check is forwarded to the third party within twenty-four (24) hours of receipt; and

2. The adviser maintains appropriate records to document the preceding;

(c) Any arrangement, including a general power of attorney, under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian. However, custody shall not include an arrangement for direct deduction of fees from client accounts held with a qualified custodian if the adviser provides the following safeguards:

1. The adviser has written authorization from the client to deduct advisory fees from the account;

2. Each time a fee is directly deducted from a client account, the adviser concurrently:

(a) Sends the qualified custodian notice of the amount of the fee to be deducted, and

(b) Sends the client an invoice itemizing the fee, including the formula used to calculate the fee, the amount of assets under management that the fee is based on, and the time period covered by the fee;

(d) Any capacity that gives the adviser access or legal ownership to client funds or securities. Such capacity shall include, but not limited to, general partner of a limited partnership, managing partner of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust;

(2) "Independent party" means a person that:

(a) Is engaged by the adviser to act as the gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(b) Does not control and is not controlled by and is not under common control with the adviser; and

(c) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser;

(3) "Independent representative" means a person who:

(a) Acts as an agent for an advisory client; or

(4) For a pooled investment vehicle:

(a) Acts as an agent for the limited partners of a limited partnership, for members of a limited liability company or for other beneficial owners of another type of pooled investment vehicle; and

(b) In the case of a pooled investment vehicle, acts as an agent for limited partners of a limited partnership, for members of a limited liability company, or for other beneficial owners of another type of pooled investment vehicle, and by law or contract is obligated to act in the best interests of the advisory client or the limited partners, members, or other beneficial owners;

(c) Does not control, is not controlled by, and is not under common control with the adviser; and

(d) Does not have, and has not had within the past two (2) years, a material business relationship with the adviser.

(4) "Net worth" means an excess of assets over liabilities as determined by generally-accepted accounting principles, but shall not include as assets:

(a) Deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense or any other intangible asset;

(b) Home, home furnishings, automobiles, and any other items not readily marketable. If, in the case of an individual:

(c) Advances or loans to stockholders or officers or related parties of stockholders or officers. If, in the case of a corporation:

(d) Advances or loans to partners or related partners of partners. If, in the case of a partnership:

(5) "Qualified custodian" means any of the following institutions or entities not controlling and not controlled by, nor under common control with, the adviser:

(a) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation;

(b) A registered broker-dealer holding the client assets in customer accounts;

(c) A registered futures commission merchant under 7 U.S.C. 6(a)(4) (Section 4(a) of the Commodity Exchange Act, holding the client funds in customer accounts, but only with respect to client funds and futures contracts in those accounts or other securities incidental to transactions in the purchase or sale of a commodity for future delivery or options thereon; and

(d) A foreign financial institution that customarily holds financial assets for its customers, if [reserved] that the foreign financial institution keeps the advisory client’s assets in customer accounts segregated from the institution’s proprietary assets;
the formula used to calculate the fee, the amount of assets under management that the fee is based on, and the time period covered by the fee; and

c) At least quarterly, the qualified custodian shall send to the client, an account statement identifying the amount of funds and each security in the account at the end of the period and setting forth all transactions in the account during that period.

Section 3, Capital Requirements. An investment adviser registered or required to register pursuant to the Securities Act of Kentucky, KRS Chapter 292, shall meet the following net worth requirements established in this section.

(1) An adviser who has custody of client funds or securities, except as an adviser [described in Section 4(7) or 4(3)], having custody due entirely to advising pooled investment vehicles and complying with the [these] described in Section 4(7) or 4(3) of this administrative regulation, shall [3(7) or 4(3)], shall have [at all times] maintain a minimum net worth of $30,000. An adviser may substitute up to $25,000 of the net worth requirement with a bond for the substituted amount issued by a bonding company that is qualified to do business in Kentucky.

(2) An adviser who has discretionary authority over client funds or securities, but does not have custody of client funds or securities shall [at all times] maintain a minimum net worth of $10,000 or be bonded for that amount by a bonding company that is qualified to do business in Kentucky.

(3) An adviser shall [at all times] maintain a positive net worth.

(4) [For purposes of this regulation.] An adviser shall not be deemed to be exercising discretion if [when] the adviser places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(a) The adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the adviser to affect securities transactions for the client in the client's broker-dealer account.

(b) The investment adviser contract specifically states that the client does not grant discretionary authority to the adviser and the adviser in fact does not exercise discretion with respect to the account;

(c) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the adviser's authority in the client's broker-dealer account to the placement of orders or deduction of adviser fees.

(5) An [The] executive director may require that a current appraisal be submitted in order to establish the worth of any asset.

(6) [Every] adviser that has its principal place of business in a state other than Kentucky shall maintain the [securities] Commonwealth shall be required to maintain only such minimum capital as required by the state in which the adviser maintains its principal place of business, if [provided that] the adviser is licensed in that state and is in compliance with that state's minimum capital requirement.

Section 4. [3-1] Custody of Client Funds or Securities. [4(7)] An investment adviser registered or required to register pursuant to the Securities Act of Kentucky, KRS Chapter 292, shall not be deemed to be appropriate and in the public interest that the adviser comply with the following requirements established in this section, if the adviser has custody of client funds or securities. [1] [The] adviser shall give notice to the executive director in writing on Form ADV that the adviser has or may have custody.

(1) The funds and securities shall be maintained by an independent qualified custodian as defined in Section 4(4) of this administrative regulation.

(a) In a separate account for each client under the client's name; or

(b) In accounts that contain only the client's funds and securities, under the adviser's name as agent or trustee for the client.

(2) The adviser shall notify the client in writing of the independent qualified custodian's name, address, and the manner in which the funds or securities are maintained promptly when the account is opened and following any changes to this information.

(3) Account statements shall be sent to the client, either.

1. [a] (1) By the [Independent] qualified custodian and the adviser shall have a reasonable basis for believing that the custodian sent an account statement, at least quarterly, to each of the adviser's clients for which it maintains funds or securities, identifying the amount of funds in each security in the account at the end of the period, and setting forth all transactions in the account during that period; or

2. [b] (2) By the adviser, if the following conditions are met [provided that]:

[a] (1) The adviser shall send an account statement, at least quarterly, to each client for whom the adviser has custody of funds or securities, identifying the amount of funds in each security to which it has custody at the end of the period, and setting forth all transactions during the period.

[b] (2) An independent certified public accountant shall verify all client funds and securities by actual examination on an annual basis. The adviser shall file a copy of the accountant's report and financial statements with the executive director within thirty (30) days of the completion of the examination, along with a letter from the accountant stating that it has examined the funds and securities and described the nature and extent of the examination; and

[c] (3) The adviser, upon notice from the certified public accountant of finding any material discrepancies during the course of the examination, shall notify the executive director within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by certified first class mail.

[b] (3) If the adviser is a general partner of a limited partnership, managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, then the account statement required by paragraph (a) of this subsection shall [under-paragraph (4)(a) of this section must be sent to such limited partner, member, other beneficial owner, or their independent representative.

[b] (4) A client may designate an independent representative to receive on his behalf such account statements as required under subsections (2) and (3) [except as (3) and (4)] of this section.

[b] (5) [6] An adviser who has custody by any arrangement, including, but not limited to, a general power of attorney, under which the adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian shall file a report with all of the requirements established in subsection 3(2) of this section [contained in Section 3(b) of this section.

[b] (6) An adviser who has custody and who does not meet the exception established in Section 3(3) of this administrative regulation [provided under-Section 3(3)] shall, in addition to the safeguards established in subsections (1) through (4) of this section, set forth in Section 3(4) through (6), also comply with the following:

(a) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts; and

(b) Send all invoices or receipts to the independent third party detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation as [such] that the independent party can:

1. Determine that the payment is in accordance with the pooled investment vehicle standards; and

2. Present to the qualified custodian approval for payment of the invoice with a copy provided to the adviser.

[b] (7) The adviser shall notify the executive director in writing on Form ADV that the adviser intends to use the safeguards provided in this section.

Section 5. [4-1] Exceptions to Custody Requirements. The custody requirements in Section 4 of this administrative regulation shall [3-6] not apply to the exceptions listed in this section [as follows]:

(1) Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5(a)(1), the adviser may use the company's transfer agent in lieu of a qualified custodian for purposes of complying with Section 4(3) of this administrative regulation.
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(2) Certain privately offered securities, 
   (a) An adviser shall not be [sic: net] required to comply with the 
       custody requirements with respect to securities that are: 
       1. Acquired from the issuer in a transaction or chain of trans-
          actions not involving a public offering; 
       2. Unidentified, and ownership thereof is recorded on the 
          books of the issuer or its transfer agent in the name of the client; 
       and 
       3. Transferable only with prior consent of the issuer or holders 
          of the outstanding securities of the issuer. 
   (b) The exception provided in paragraph (a) of this subsec-
       tion shall not be [sic: of] the section is not available with respect 
       to securities held for the account of a limited partnership, limited 
       liability company, or other pooled investment vehicle, unless the 
       entity is audited on an annual basis. The adviser shall distribute the 
       audited financial statements as required by subsection [dis- 
       sembed in paragraph] (3) of this section. The adviser shall notify 
       the executive director in writing on Form ADV that the adviser in-
       tends to provide audited financial statements. 
   (3) Limited partnerships subject to annual audit. An adviser 
       shall not be [sic: net] required to comply with Section 4(f) [sic: of] 
       this administrative regulation with respect to the account of a lim-
       ited partnership, limited liability company, or other pooled 
       investment vehicle that is subject to an annual audit and distributes 
       its audited financial statements prepared in accordance with gen-
       erally accepted accounting principles to all limited partners, par-
       tners, or other beneficial owners, within 120 days of the end of its 
       fiscal year. The adviser shall also notify the executive director of 
       the audit in writing. Form ADV-UBI-2 shall be used to employ the 
       use these audit safeguards described in this section. 
   (4) Registered investment companies. The adviser shall not 
       be [sic: net] required to comply with Section 4(f) [sic: of] this admin-
       istrative regulation with respect to the account of an investment 
       company registered under the Investment Company Act of 1940, 15 

[Redacted] 

Section 1. Definitions. (1) "Agency" means Kentucky 
Association for Community Action or YAKA, or a local community ac-
ction agency contracted to provide LIHEAP. 
(2) "Annual low income home energy assistance program state 
plan" means an application prepared in accordance with 42 U.S.C. 
8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 
96.87. 
(3) "Authorized representative" means the person who pre-
sents to an agency a written statement signed by the head of the 
household, or spouse of the head of the household, authorizing 
that person to apply on the household's behalf. 
(4) "Cash component" means the component that provides 
assistance to households that are experiencing a home heating 
crisis. 
(5) "Economic unit" means one (1) or more persons sharing 
common living arrangements. 
(6) "Emergency" means, at the time of application, the 
household (es). 
(a) is without heat [at time of application]; 
(b) will be disconnected from a utility service within forty-eight 
(48) hours; 
(c) will be without fuel within four (4) days; or 
(d) without cooling as specified in Section 3 of this administra-
tive regulation. 
(7) "Energy" means electricity, gas, and other fuel that is used 
to sustain reasonable living conditions. 
(8) "Gross household income" means all earned and unearned 
income, including lump sum payments received by a household 
during the calendar month preceding the month of application. 
(9) "Heating season" means the period from October through 
April. 
(10) "Household" means an individual or group of individuals 
who are living together in the principal residence as one (1) eco-
nomic unit and who purchase energy in common.

JOHN W. CLAY, Deputy Secretary 
For LAJUANA S. WILCHER, Secretary 
CHRISTOPHER LILLY, Commissioner 
CORDELL G. LAWRENCE, Executive Director 
APPROVED BY AGENCY: January 12, 2006 
FILED WITH LRC: January 13, 2006 at 11 a.m. 
CONTACT PERSON: William E. Doyle, Staff Attorney, Office 
of Financial Institutions, Environmental and Public Protection Cab-
inet, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 
40601, phone (502) 573-3930, fax (502) 573-8787. 

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Policy Development 
(As Amended at ARRS, April 13,2006)

921 KAR 4:116. Low Income Home Energy Assistance 
Program or "LIHEAP". 

RELATES TO: KRS 194A.010, 194A.060, 194A.070 
[194B.010, 194B.060, 194B.070], 45 C.F.R. Part 96 Subpart H, 42 
STATUTORY AUTHORITY: KRS 194A.050(1) [194B.060(4)], 
42 U.S.C. 8621. 
NECESSITY, FUNCTION, AND CONFORMITY: KRS 
194A.050(1) [194B.060(4)] requires the secretary to promulgate 
administrative regulations necessary to implement programs man-
dated 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. The 
Cabinet for Health and Family Services has responsibility under 42 
U.S.C. 8621 to administer the Low Income Home Energy Assis-
tance Program to help low income households meet the cost of 
home energy. This administrative regulation establishes the eligi-
bility and benefits criteria for heating and cooling assistance. 

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(11) "Household demographics" means an applicant's:
(a) Address;
(b) Household composition that includes:
1. Size;
2. Age group;
3. Relationship to applicant;
4. Sources of income;
5. Liquid assets; and
6. Type of housing; and
(c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or shall be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Poverty level" means the "level of poverty", as defined in subsection 12 of this section.

(15) "Principal residence" means the place:
(a) Where a person is living voluntarily and not on a temporary basis;
(b) An individual considers home;
(c) To which, when absent, an individual intends to return; and
(d) Is identifiable from another residence, commercial establishment, or institution.

(16) "[145]" "Subsidy component" means the heating component that provides an eligible household with:
(a) A one (1) time annual payment to the household's energy provider; or
(b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application: (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:
(a) Proof of household income;
(b) Statement of liquid resources;
(c) Most recent:
1. Heating bill;
2. Cooling bill; or
3. Verification that heating or cooling is included in the rent;
(d) Statement of household demographics, and
(e) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria: (1) Income Gross household income shall be at or below 130% [140] percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(2) Liquid assets.
(a) The household shall have total liquid assets at time of application of not more than:
   1. $2,000; [4 $4,500; or
   2. $3,000 if at least one (1) member of the household is:
      a. Age sixty (60) or older; or
      b. Disabled; or
   3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.
(b) An excluded asset shall be:
1. A vehicle;
2. A household or personal belonging;
3. A principal residence;
4. Cash surrender value of an insurance policy;
5. A prepaid burial policy;
6. Real property; and
7. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:
(a) Home heating;
(b) Cooling costs; or
(c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:
(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source; or
(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source; or
(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:
(a) Be without an adequate source of cooling; and
(b) Have a household member who:
1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
2. Is sixty-five (65) years of age or older; or
3. Is under the age of six (6) years.

Section 4. Benefits: (1) For a subsidy component, payment to the household's heating fuel provider shall be made for the full benefit amount as follows:

(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.

(b) The amount of benefits shall be based upon household income and type of heating fuel used.

(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.

(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.

(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:
1. Fuel or other energy source for heating;
2. A space heater loaned on a temporary basis until:
   a. Fuel is delivered; or
   b. Another resource is located to alleviates the crisis;
3. A blanket or sleeping bag; or
4. Emergency shelter.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than once (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:
   1. Two (2) tons of coal;
   2. Two (2) cords of wood;
   3. 200 gallons of propane;
   4. 200 gallons of fuel oil;
   5. 200 gallons of kerosene; or
   6. $250 [425] for natural gas or electric.

(d) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel.

(e) An eligible household, including a household residing in:
1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount required by paragraph (e) of this
subsection shall be based on housing type and the household's percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percent Of Poverty</th>
<th>Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing</th>
<th>Copayment Percentage of Benefit for Households Residing in Subsidized Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-74%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>75-100%</td>
<td>10%</td>
<td>15%</td>
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<tr>
<td>101-130%</td>
<td>15%</td>
<td>20%</td>
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<tr>
<td>[140%]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time annual payment to the household's:

1. [The household's] Electric utility provider; or
2. [The] landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) A window air conditioner unit, if:

1. Criteria in Section 3(5) of this administrative regulation are met; and
2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty; and
2. Subsidized housing with:

(i) Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
(ii) Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to seventy-five (75) dollars; or

b. Nonsubsidized housing with:

(i) Zero to seventy-four (74) percent of poverty receiving up to $175; or
(ii) Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to $125.

2. Purchase a window air conditioner unit, as described in Section 8(a)(3) of the administrative regulation;

(b) Benefits based on:

1. The household's level of poverty;
2. Subsidized housing with:

a. Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
b. Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to seventy-five (75) dollars; or

3. Nonsubsidized housing with:

a. Zero percent to seventy-four (74) percent of poverty receiving up to $175; or
b. Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to $125.

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or
2. Landlord, if the cost of heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
(b) A vendor who supplies a heater, blanket, or emergency lodging; or
(c) A landlord, if heating cost is included in the rent.

(3) For the cooling component, cash benefits shall be paid to:

(a) Household's electric utility provider; or
(b) Landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 21 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor list.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;
2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;
3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
4. Provide fuel as specified and at the price quoted;
5. Comply with federal and state law pertaining to equal employment opportunity; and
6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pickup for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or
2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that:

(a) Crisis situation is resolved within forty-eight (48) hours; or
(b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for a crisis component shall be allocated based upon each local administering agency's percent-
age of the statewide population at or below 100 percent of the
poverty level.
(b) $400,000 of crisis benefit funds shall be identified as con-
tingency funds and allocated to agencies as needed.
(3) $25,000 or more shall be reserved for the Preventive As-
sistance Program to assist families with an energy payment not to
exceed $300 for each family if the payment:
(a) Prevents the removal of a child from the family; or
(b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider ac-
ccepting payment from LIHEAP for energy or services provided to
an eligible recipient shall comply with the following provisions:
(1) Reconnection of utilities and delivery of fuel during a crisis
component shall be accomplished upon certification for payment.
(2) A household shall be charged, in the normal billing process,
the difference between actual cost of the home energy and amount
of payment made through this program.
(3) A LIHEAP recipient shall be treated the same as a house-
hold not receiving benefits.
(4) The household on whose behalf benefits are paid shall not
be discriminated against, either in the costs of goods supplied or
the services provided.
(5) A landlord shall not increase the rent of a recipient house-
hold due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low
Income Home Energy Assistance Program state plan prepared in
accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart
H, sections 96.63 to 96.67 may be obtained by a request in writing
made to the Commissioner of the Department for Community
Based Services, Cabinet for Health and Family Services, 275 East
Main Street, Frankfort, Kentucky 40621

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LRC: February 1, 2006 at noon
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordi-
nator, Cabinet for Health Services, Office of the Counsel, 275 East
Main Street - SW-B, Frankfort, Kentucky 40621, phone (502) 564-
7905, fax (502) 564-7573.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amended After Comments)

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)
STATUTORY AUTHORITY: KRS 229.071(2), 229.091(1), 229.151(1), 229.171(1), 229.180(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(2) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given with the Commonwealth. KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full-contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority. This administrative regulation sets out requirements for mixed martial arts contests subject to state regulation.

Section 1. The authority shall license all persons approved to participate as a professional contestant in a mixed martial arts contest. Participants shall apply for license onsite after prefight physicals have been performed. Applications shall not be mailed to the authority. The license fee for each participant shall be twenty (20) dollars. All licenses shall expire on December 31 of the year in which they are issued.

Section 2. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a professional mixed martial arts show shall be as follows:
(1) Judge for mixed martial arts - $150.
(2) Timekeeper for mixed martial arts - $100.
(3) Physician for mixed martial arts - $250.
(4) Referee for mixed martial arts - $150.

Section 3. Before the commencement of the main event of any mixed martial arts show or exhibition, the promoter of the show or exhibition shall tender to the inspector or employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 2 of this administrative regulation.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date no less than thirty (30) calendar days before the requested date for approval by the authority. There shall be no advertising of the event prior to this approval. Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. The proposed program for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be filed immediately with the authority.

Section 7. All contestant compensation agreements shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 8. A contest or exhibition of a mixed martial art shall be conducted pursuant to the official rules for the particular art unless it conflicts with any part of the statutes or regulations. If an official rule conflicts with any part of the statutes or administrative regulations the statute or administrative regulation will prevail. The sponsoring organization or promoter shall file a copy of the official rules with the authority along with the thirty (30) day show notice required in Section 5 of this administrative regulation.

Section 9. (1) Before the commencement of a show, all changes or substitutions shall be:
(a) Announced from the ring; and
(b) Posted in a conspicuous place at the ticket office.
(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 10. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.

Section 11. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all sides of the ring.
(2) A partition, barricade, or similar divider shall be placed.
(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and
(b) Along the sides of the entry lane for contestants to enter the ring and the spectator area.

Section 12. The ring shall meet the following requirements.
(1) All bouts shall be held in a four (4) sided roped ring with the following specifications.
(a) It shall not be less than sixteen (16) feet square inside the ropes;
(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;
(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor;
(d) The ring shall have steps to enter the ring on two (2) sides.
(2) The ring shall be formed of ropes with the following specifications:
(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:
1. Twenty-four (24) inches;
2. Thirty-six (36) inches; and
3. Forty-eight (48) inches;
(b) A fourth rope may be used if approved by the inspector or employee of the authority prior to the commencement of the show;
(c) A rope shall be at least one (1) inch in diameter;
(d) A rope shall be wrapped in a clean, soft material and drawn taut,
(e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and
(f) A rope shall be supported by ring posts that shall be:
1. Made of metal or other strong material;
2. Not less than three (3) inches in diameter; and
3. At least eighteen (18) inches from the ropes.
(4) The ring floor shall be padded or cushioned with a clean, soft material that:
(a) Is at least one (1) inch in thickness using slow recovery foam matting;
(b) Extends over the edge of the platform; and
(c) Is covered with a single canvas or a similar material stretched tightly.

(5) A ring rope shall be attached to the ring posts by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.

(6) A promoter may request an alternate ring design, including fenced area rings consisting of more than four (4) equal sides provided that the area inside is no less than 256 square feet. This request shall be submitted to the executive director no less than thirty (30) days prior to the event.

(a) A fenced area used in a contest or exhibition of mixed martial arts shall meet the following requirements:
   1. The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.
   2. The floor of the fenced area shall be padded with closed-cell foam, with at least one (1) inch layer of foam padding, with a top covering of a single canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in bunches or ridges shall not be used.
   3. The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the unarmed combatants.
   4. Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.
   5. The fencing used to enclose the fenced area shall be made of material that will prevent an unarmed combatant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.
   6. Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.
   7. The fenced area shall have at least one (1) entrance [two entrances].
   8. There shall be no protrusion or obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.

Section 13. A bell or horn shall be used by the timekeeper in indicating the time.

Section 14. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:
   (1) A public address system in good working order.
   (2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the ring and the ring floor.
   (3) Items for each contestant's corner, to include:
      (a) A stool or chair;
      (b) A clean bucket;
      (c) Towels; and
      (d) Rubber gloves.
   (4) A complete set of numbered round-cards.
   (5) A clean stretcher and a clean blanket, placed under or adjacent to the ring, throughout each program.
   (6) First aid oxygen apparatus or equipment.

Section 15. A scale used for any weigh-in shall be approved in advance by the authority.

Section 16. All promoters shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 17. All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event. There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests. If the ambulance is required to leave the event for any reason, no boxing will be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 18. There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin. The physician shall have at ringside any medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 19. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts event. The minimum amount of coverage per contestant shall be $5,000 health and $5,000 accidental death benefits. A certificate of insurance coverage must be provided to the authority no less than two (2) business days before the event.

Section 20. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts bout is being held. This notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 21. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:
   (1) Three (3) judges;
   (2) One (1) timekeeper;
   (3) One (1) physician, except that two (2) physicians shall be assigned to any bout designated a championship bout by a national sanctioning body recognized by the authority; and
   (4) One (1) referee, unless more than thirty (30) rounds are scheduled, in which case a minimum of two (2) referees shall be required.

Section 22. Unless the authority approves an exception:
   (1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration.
   (2) A championship contest of mixed martial arts shall be five (5) rounds in duration.
   (3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 23. Weight classes of unarmed combatants; weight loss after weigh-in.
   (1) Except with the approval of the authority, the classes for unarmed combatants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

<table>
<thead>
<tr>
<th>CLASS</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flyweight</td>
<td>Up to 125 lbs</td>
</tr>
<tr>
<td>Bantamweight</td>
<td>Up to 135 lbs</td>
</tr>
<tr>
<td>Featherweight</td>
<td>Up to 145 lbs</td>
</tr>
<tr>
<td>Lightweight</td>
<td>Up to 155 lbs</td>
</tr>
<tr>
<td>Welterweight</td>
<td>Up to 170 lbs</td>
</tr>
<tr>
<td>Middleweight</td>
<td>Up to 180 lbs</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>Up to 205 lbs</td>
</tr>
<tr>
<td>Heavyweight</td>
<td>Up to 265 lbs</td>
</tr>
<tr>
<td>Super Heavyweight</td>
<td>Over 265 lbs</td>
</tr>
</tbody>
</table>

(2) After the weigh-in of an unarmed combatant competing in a contest or exhibition of mixed martial arts:
   (a) Change in weight in excess of two (2) pounds is not permitted for an unarmed combatant who weighed in at 145 pounds or less.
   (b) Change in weight in excess of three (3) pounds is not permitted for an unarmed combatant who weighed in at over 145 pounds.

(3) The change in weight described in subsection two shall not occur later than two (2) hours after the initial weigh-in.
Section 24. The following shall be prohibited:
(1) "Battle royal"; and
(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 25. Contestants Repeatedly Knocked Out or Otherwise Defeated. (1) A mixed martial arts contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician, the authority decides the action is necessary in order to protect the health and welfare of the contestant.
(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout shall not be allowed to compete again until he has been investigated by the authority and examined by a physician.
(3) A mixed martial arts contestant whose license is under suspension in any other jurisdiction may be allowed to participate in any contest only after review and approval of the case by an inspector or employee of the authority.
(4) Any mixed martial arts contestant who has been knocked out shall be prohibited from all physical contact for sixty (60) days.
(5) Any mixed martial arts contestant who has suffered a technical knockout may, in the discretion of the inspector, shall be prohibited from physical contact for up to thirty (30) days. In determining how many days to prohibit the contestant from physical contact, the inspector shall consider the nature and severity of the unarmed combat that resulted in the TKO.

Section 26. No person over the age of thirty-nine (39) shall box without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 27. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 28. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by any name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 29. A contestant shall submit HIV and Hepatitis B and C test results at or before pre-fight physical. The results of these tests shall be no more than 180 days old. No one with positive test results shall be allowed to fight.

Section 30. No contestant shall compete against a member of the opposite sex.

Section 31. A contestant shall not use a belt which contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 32. Proper attire for a mixed martial arts contestant. A mixed martial arts contestant shall:
(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.
(2) Not wear shoes or any padding on his feet during the contest.
(3) Wear a groin protector
(4) Wear a kidney protector if available
(5) Wear a mouthpiece

Section 33. The authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestant, or both.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:
(a) The better unarmed combatant of a round receives 10 points and his opponent proportionately less.
(b) If the round is even, each unarmed combatant receives 10 points.
(c) No fraction of points shall be given.
(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.
(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the authority's desk.
(3) The majority opinion is conclusive and, if there is no majority, the decision is a draw.
(4) When the authority's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall then inform the audience of the decision over the speaker system.
(5) Unjudged exhibitions may be permitted with the prior approval of the authority.

Section 35. The following acts constitute fouls in mixed martial arts:
(1) Butting with the head.
(2) Eye gouging of any kind.
(3) Biting.
(4) Hair pulling.
(5) Fishhooking.
(6) Grain attacks of any kind.
(7) Putting a finger into any orifice or into any cut or laceration on an opponent.
(8) Small joint manipulation.
(9) Striking to the spine or the back of the head.
(10) Striking downward using the point of the elbow.
(11) Throat strikes of any kind, including, without limitation, grabbing the trachea.
(12) Clawing, pinching or twisting the flesh.
(13) Grabbing the clavicle.
(14) Kicking the head of a grounded opponent.
(15) Kneeling the head of a grounded opponent.
(16) Stomping the head of a grounded opponent.
(17) Kicking to the kidney with the heel.
(18) Spiking an opponent to the canvas on his head or neck.
(19) Throwing an opponent out of the ring or fenced area.
(20) Holding the shorts of an opponent.
(21) Spitting at an opponent.
(22) Engaging in any un sportsmanlike conduct that causes an injury to an opponent.
(23) Holding the ropes or the fence.
(24) Using abusive language in the ring or fenced area.
(25) Attacking an opponent on or during the break.
(26) Attacking an opponent who is under the care of the referee.
(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat.
(28) Flagrantly disregarding the instructions of the referee.
(29) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
(30) Interference by the comer.
(31) The throwing by a contestant's corner staff of objects into the ring [throwing in the towel] during competition.

Section 36. (1) If an unarmed combatant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.
(2) When the referee determines that it is necessary to deduct
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(2) A contestant with long hair shall secure her hair with soft and nonabrasive material; (3) Weight classes shall be those established in section 23, (4) A contestant shall wear a properly-fitted: (a) Breast protector; (b) Groin protector; and (c) Mouthpiece; (5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 341. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Application for License as a Mixed Martial Arts Contest", (260); (b) "MMA Show Notice Form", 2/06; and (c) "MMA Event Report", 2/06.

(2) These forms may be inspected, obtained, or copied, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation sets forth detailed rules governing the conduct of mixed martial arts events. (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that mixed martial arts events in the Commonwealth are conducted such a manner as to ensure the health and safety of all participants. (c) How does this administrative regulation conform to the contents of the authorizing statute? KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority's jurisdiction, as well as to provide the professional staff necessary to properly regulate those events. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth in detail the rules governing the conduct of participants at mixed martial arts events taking place in the Commonwealth. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation? N/A (b) The necessity of the amendment to this administrative regulation: N/A (c) How the amendment conforms to the content of the authorizing statute? N/A (d) How the amendment will assist in the effective administration of the statutes: N/A (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in mixed martial arts events, and the officials who regulate those events, will be impacted 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: The licensed participants at elimination events will be subject to re-
quirements concerning dress and protective gear, gear specifications, pre-fight physicals, and other matters designed to ensure these events are conducted in a safe and fair manner.

(5) Provide an estimate of how much it will cost to implement this regulation:
(b) Initially: Minimal
(c) On a continuing basis: Minimal
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulatory community.
(7) Provide an assessment of whether an 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 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 itself does not establish any fees.
(9) TIERING: Tiering is not applied in this administrative regulation, as there is no reason to discriminate among mixed martial arts participants as a class.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Admissions
(Amended After Comments)


RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 500-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.190, 635.095, 635.100(7), 640.120, 645.250
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", April 13, 2006 [9992], which includes the following:
200  Classification [and Assessment] [Amended 01/13/06]
200.1  Day Treatment Admissions [Amended 01/13/05]
204  Placement [Amended 01/13/06]
202  Waiting List [Amended 01/13/06]
204  Daily Census and Population [Amended 01/13/06]
206  Administrative Transfers [Amended 01/13/06]
208  Youth Rights/Orientation [Amended 04/13/08 [01/13/06]]
209  Access to Outside Investigative Units [Amended 04/13/08 [01/13/06]]
210  Interstate Referrals [Amended 01/13/06]
211  Interstate Runaways, Escapes and Absconders [Amended 01/13/06]
212  Out-of-State Purchase of Care [Amended 01/13/06]
213  Interstate Travel [Amended 01/13/06]
214  Interstate Revocations and Case Closure [Amended 01/13/06]
216  Repeal/Assessment Center [Amended 01/13/06]
216  Repeal/Assessment Center/Protocol for Transition [Amended 01/13/06]
217  Advance Care Unit 04/13/06 [01/13/06]
(b) The "Classification and Assessment Manual", April 13, 2006 [01/13/06].

(c) The "Youth Level of Service/Care Management Inventory (YLSCMI), User's Manual", 01/13/06.
(d) The "Child and Adolescent Service Intensity Instrument (CASS)", also known as "Child and Adolescent Level of Care Utilization System (CALCUCS)", 01/13/06.
(e) The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06.
(f) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIDGET SKAGGS BROWN, Commissioner
APPROVED BY AGENCY: April 11, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2736, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential and community population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the admissions of the Department of Juvenile Justice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges, and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.
(d) How the amendment will assist in the effective administration of the statutes. The amendment will help the Department of Juvenile Justice to operate more efficiently.
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1460 employees of the residential programs, 2664 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice facilities.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure a clearer understanding of the policies and procedures by employees and residents, thereby impacting the security and safety of the agency and the public.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $5000
(b) On a continuing basis: $5000
(c) What is the source of funding to be used for the implement-
tation and enforcement of this administrative regulation: Funds budgeted for this 2004-2006 biennium.
(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: None.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.
(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (c), 158.6451
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to adopt administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are described in the program of studies, 704 KAR 3.303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma, including the requirements beginning with the graduating class of 2012 [2002].

Section 1. Until the graduating class of 2012 [2002], each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two (22) [twenty-six (26)] credits for high school graduation. Those credits shall include the following minimum requirements:

(1) Language arts: Four (4) credits including English I, II, III, and IV [4];
(2) Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization; [2 (including one (1) credit in U.S. History]);
(3) Mathematics: three (3) credits (including Algebra I, Geometry, or an elective as provided in the program of studies, 704 KAR 3.302 [3]);
(4) Science: three (3) credits (including life science, physical science, and earth and space science as provided in the program of studies, 704 KAR 3.303 [2]);
(5) Health: one-half (1/2) credit [±];
(6) Physical education: one-half (1/2) credit [±];
(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content): one (1) credit; and
(8) Electives: seven (7) credits [8].

Section 2. (1) Beginning with the graduating class of 2012 [2002], each student in a common school shall [complete an individual graduation plan which incorporates emphasis on career development and shall] have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the program of studies, 704 KAR 3.303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (including English I, II, III, and IV) to include the content strands of reading, writing, speaking, listening, observing, inquiry, conventions, analysis, and using technology as a communication tool. Language arts shall be taken each year of high school;
(b) Social studies - three (3) credits to include the content strands of historical perspective, including U.S. History, geography, economics, government, and civics, and cultures and societies (to incorporate U.S. History, Economics, Government, World Geography, and World Civilization);
(c) Mathematics - three (3) credits to include the content strands of number property and operation, measurement, geometry, data analysis and probability, and algebraic thinking, and including the following minimum requirements:
   1. One (1) mathematics course taken each year of high school to ensure readiness for postsecondary education or the workforce based on the student's individual learning plan;
   2. Required courses shall include: Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical (or technical/occupational) course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the program of studies, 704 KAR 3.303;
   3. Prealgebra shall be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704 KAR 3.303);
   (d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content strands of biological (including life science, physical science, and earth and space science, and unifying concepts) as provided in the program of studies, 704 KAR 3.303; (e) Health - one-half (1/2) credit to include the content strands of individual well-being, consumer decision, personal wellness, mental wellness, and community services;
   (f) Physical education - one-half (1/2) credit to include the content strands of personal wellness, psychomotor, and lifetime activity;
   (g) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content strands of arts, dance, music, theatre, and visual arts, or a standards-based specialized arts course based on the student's individual learning plan; and
   (h) Academic and career interest standards-based learning experiences - seven (7) credits to include four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and
   (i) Demonstrated performance-based competency in technology [Electives—seven (7) credits]
(2) A local board of education may substitute an integrated, applied, interdisciplinary, technical/occupational, or technical course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4.060. If a substitution is made, a rationale and course description shall be filed with the Department of Education.
(3) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, or technical (or technical/occupational) course, or a half-level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4.060. If a substitution is made, a rationale and course description shall be filed with the Department of Education.

Section 3. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.35:2.38 as established in Academic expectations, 703 KAR 4.060.
(2) A district shall develop a method to evaluate the effectiveness and results of an individual learning plan process. The evaluation method shall include input from students, parents, and
school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent shall receive information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student’s individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student’s eighth grade year, the individual learning plan shall set learning goals for the student based upon academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student’s postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 4. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content knowledge in the program of studies. 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A board of education may award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject;

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject; and

(c) A standards-based credit earned by a student enrolled in grade 6, 7 or 8:

1. The content of the course is the same that is established in the Program of studies, 704 KAR 3:303; and

2. The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(3) A district shall establish a policy for a performance-based credit system that includes, at least:

(a) The procedures for developing performance-based credit systems and for determining;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, Program of studies, and 703 KAR 4 000, Academic expectations;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning;

and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are aligned to further student progress towards the individual Learning plan. Supervised by qualified instructors and aligned with state and local content and performance standards.

(4) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with subsection (1) of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously.

(c) Standards-based portfolios, senior year or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; and

(f) Standards-based internship, cooperative learning experiences, or other supervised experience in the school and the community.

(5) [(4)] Each local board of education shall maintain a copy of its local policy on high school graduation requirements. [(4a)] This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

1. If a high school does not have a school council, this description shall be provided by the local board.

2. If a high school does have a school council, this description shall be provided by the school council to the local board of education.

(b) A letter of assurance of compliance and a copy of the local policy from the local board of education and school council shall be submitted to the Department of Education by the local board. If the local board or school council fails to file a letter of assurance of compliance referencing the amendments shall be filed with the Department of Education by the local board.

Section 5. [(3)] (1) A student who satisfies the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 6. [(4)] This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 7. (1) Until the graduating class of 2012, if the severity of an exceptional student’s disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered. This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall be recognized for achievement. This may be accomplished by the local board of education awarding a certificate.

(2) Beginning with the graduating class of 2012, if the severity of an exceptional student’s disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate. This certificate will indicate the student’s readiness for work experiences and will be awarded by the local board of education consistent with the graduation practices for all students. [(6)] If the seventy-five percent of an enrolled student’s disability precludes a course of study that meets the high school graduation requirements described in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate. This certificate will indicate the student’s readiness for work experiences and will be awarded by the local board of education consistent with the graduation practices for all students. [(7)]
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, Chairperson
APPROVED BY AGENCY: April 13, 2006
FILED WITH LPC: April 12, 2006 at 10 a.m.

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 establishes the minimum high school graduation requirements for students. The regulation includes existing high school graduation requirements and new graduation requirements for students beginning in 2012.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 156.160 and 158.645.
(c) How this administrative regulation conforms to the content of the authorizing statute. This administrative regulation provides the minimum high school graduation requirements in accordance with KRS 156.160 and 158.645.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidelines and minimum requirements for local districts to meet the educational goals and capacities required of students in Kentucky's public education system as defined by KRS 156.160 and 158.645.

(2) If 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 704 KAR 3:305 includes revisions to the content area requirements for students to graduate from high school (including requiring rigorous mathematics instruction every year, lab-based science courses), requirements for guidance programs and individual learning plans for students, and descriptions of the ways students may earn credit in high school.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to increase the rigor of secondary education for all students in Kentucky schools to help increase the success of students in post-secondary education and training.
(c) How the amendment conforms to the content of the authorizing statute: KRS 156 645 identifies the capacities required of students in the public education system. This administrative regulation further establishes the content requirements that will allow and assist all students to acquire those capacities.
(d) How the amendment will assist in the effective administration of the statutes: 704 KAR 3:305 establishes the required content that must be provided to students in order to meet the minimum high school graduation requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local districts and schools must ensure the content established in 704 KAR 3:305 is provided to each student prior to high school graduation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Local districts and schools will revise course offerings and available educational opportunities to ensure students have access to required content.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency or school districts to implement this administrative regulation. Districts and schools will use existing funding to implement the regulation.
(b) On a continuing basis: There will be no additional costs to the agency or school districts to implement this administrative regulation.
(c) If any: What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

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

(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 those individuals or entities regulated by it.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amended After Comments)

810 KAR 1:070. Kentucky Thoroughbred Breeders' Incentive Fund.

RELATES TO: KRS 230.225(7)(b), 230.330, 230.800
STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.800 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.800(2)(b) authorizes the Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.
(2) "Claiming race" means a race in which every horse running therein may be transferred in conformity with 810 KAR 1:015.
(3) "Claiming earnings" means the gross cash portion as determined by the Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction excluding any supplemental funds.
(4) "Claiming race" means a race in which every horse running therein may be transferred in conformity with 810 KAR 1:015.
(5) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.
(6) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.
(7) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.
(8) "Group I race" means:
(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or
(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.
(8) "Group II race" means:
(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or
(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.
(9) "Group III race" means:
(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or
(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.
(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders’ Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBF.
(11) "KBF" means the Kentucky Thoroughbred Breeders’ Incentive Fund.
(12) "KBF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders’ Incentive Fund.
(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.
(14) (14)(1) "Kentucky Thoroughbred Breeders’ Incentive Fund" or "KTBF" means the trust and revolving fund set up in KRS 230.170.
(15) (14)(2) "KTBF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders’ Incentive Fund.
(16) "Maiden special weight race" means a race in which:
(a) None of the runners have been previously declared a winner; and
(b) None of the runners are eligible to be claimed.
(17) (14)(2) "Overall weight race" means a race for which entries close by the time set by the racing secretary.
(18) (14)(2) "Purse" means the gross cash portion of the prize awarded to the qualified winner of a race that is paid for from the association or the licensee holder permitted to conduct racing in the jurisdiction, excluding any supplemental funds.
(19) "Qualified breeder" means the breeder of record as listed in the Jockey Club records [owner of the thoroughbred dam of a KTBF registered horse who owns the dam at the time the KTBF registered horse is foaled in Kentucky].
(20) (14)(2) "Qualified Kentucky claiming horse" means a horse who is born out of a qualified mare and from a Kentucky sire; and who receives earnings from a claiming race in Kentucky.
(21) (14) "Qualified mare" means a thoroughbred mare who resides in Kentucky at the time of the first cover in Kentucky by a Kentucky sire until foaling.
(22) (14)(2) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire and whose nose reaches the finish line first or is placed first through disqualification by the stewards and is not eligible to be claimed in that race.
(23) "Qualified winner’s earnings" means the gross cash portion of the prize awarded to the qualified winner of a race that is paid for from the association or the licensee holder permitted to conduct racing in the jurisdiction.
(24) (20) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a nonclaiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the Kentucky Thoroughbred Breeders’ Incentive Fund shall be made as soon as is practicable after the end of each full racing year based on a calendar year [beginning with the year ending December 31, 2006], but not later than February 15 of the calendar year following the last date the application may be filed under Section 7(10) of this administrative regulation [November 1 in any calendar year].

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders’ Incentive Fund, subject to registration under Section 4(1)(6) of this administrative regulation.

For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(3) The races eligible for awards from the KBF [KTBF] as provided in Sections 3 and 6 of this administration regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1) Kentucky first component:
(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight, allowance, and stakes race run in Kentucky, except for any Breeders’ Cup World Thoroughbred Championship race run in Kentucky and any Grade I stakes race run in Kentucky.
(b) The incentive shall be an amount which is equal to twenty-five (25) percent of the qualified winner’s earnings except for those receiving awards under subsection (3) of this section.
(c) The amount a qualified breeder may be awarded from the KBF [KTBF] in each race shall be no more than $10,000 except for those receiving awards under subsection (3) of this section.
(2) National component:
(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race won by two (2), three (3), and four (4) year old thoroughbreds held in states within the United States other than Kentucky.
(b) The incentive shall be an amount which is equal to ten (10) percent of the qualified winner’s earnings except for those receiving awards under subsection (3) of this section.
(c) The amount a qualified breeder may be awarded from the KBF [KTBF] in each race shall be no more than $10,000.

(3) Kentucky Grade I stakes race component. An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run in Kentucky, except for any Breeders’ Cup World Thoroughbred Championship race run in Kentucky as follows:
(a) An incentive in the total amount of $25,000 shall be awarded to the qualified breeder of each of the qualified winners of each Grade I stakes race run in Kentucky, except for the Kentucky Derby and the Kentucky Oaks; and
(b) An incentive in the total amount of $100,000 shall be awarded to the qualified breeder of each of the Kentucky Derby and the Kentucky Oaks.

(4) National Grade I stakes race component. An incentive in the total amount of $25,000 shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run within the United States but outside of Kentucky except that an incentive shall not be awarded under this administrative regulation in connection with any Breeders’ Cup World Thoroughbred Championship race.

Kentucky claiming component. An incentive shall be awarded to the qualified breeders of Kentucky’s best claiming horses as follows.
(a) An incentive of $25,000 shall be awarded to the qualified breeder of the qualified Kentucky claiming horse that has the highest earnings in claiming races run at each of Churchill Downs, Ellis Park, Keeneland, and Turfway Park, respectively, for each calendar year and
(b) A claiming title incentive of $100,000 shall be divided among the breeders of the top three (3) qualified Kentucky claiming horses with the highest cumulative claiming earnings derived from claiming races in Kentucky for each calendar year in the following percentages:
1. Fifty (50) percent for 1st place;
2. Thirty (30) percent for 2nd place; and
3. Twenty (20) percent for 3rd place.

Section 4. Registration of Foals. (1)(a) For a horse foaled prior to 2007 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file with the Authority a "Grandfather Application for the Kentucky Thoroughbred Breeders’ Incentive Fund for a horse born in 2006 and prior years".
(b) The application shall be filed no later than December 31 of the year following the year in which the horse has raced.
In a race that would qualify him for an incentive from the KBIF,
(a) A filing fee of thirty (30) dollars may be paid with the
application or it shall be deducted from the award amount.

(2)(a) For the 2006 breeding season, the intended breeder
of record shall file with the Authority an "Application for the
Kentucky Thoroughbred Breeders' Incentive Fund (for the
2006 breeding season)"
(b) The application shall be filed either:
(i) Within forty five (45) days after the first cover of the
mare proposed to be a qualified mare to a Kentucky sire,
along with a filing fee of thirty (30) dollars; or
(ii) On or prior to August 1, 2006 along with a filing fee of
sixty (60) dollars, except as provided in subsection (6) of this
section.
(c) For the breeding season beginning in 2007 and thereaf-
ther, the intended breeder of record shall register the unborn
foal with the Authority on or prior to August 1 of the breeding
season by filing the "Application for the Kentucky Thou-
roughbred Breeders' Incentive Fund (for the breeding season
beginning in 2007)" and paying a filing fee of sixty (60) dollars,
except as provided in subsection (6) of this section.

(3)(a) The Authority shall be recognized and designated as
the sole official registrar of the Kentucky-Thoroughbred Breed-
er Incentive Fund for the purposes of registering Kentucky-
 thoroughbred foals in accordance with the terms of this
administrative regulation.
(b) The records of the Jockey Club shall be used as the
official records of the Authority for determining the following:
1. The identity of the qualified breeder;
2. The earnings for each race pursuant to which an award
shall be granted under the administrative regulation;
3. The purse for each race pursuant to which an award shall
be granted under the administrative regulation;
4. The name of the qualified winner for each race pursuant
to which an award shall be granted under the administrative
regulation;
5. The name of each horse determined to be a qualified
Kentucky claiming horse for purposes of calculating the
awards under Section 3(b) of this administrative regulation;
6. Other information for purposes of administering the KTBF.

(4)(a) The person applying to be listed as the qualified
breeder shall file with the Authority an "Application for Thoroughbred-
Foal Certificate of Eligibility for the Kentucky-Thoroughbred Breed-
ers' Incentive Fund" within forty-five (45) days after the first cover,
except as provided in subsection (6) of this section.
(b) The application form shall be submitted to the Kentucky
Horse Racing Authority together with a thirty (30) dollars filing fee.

(5)(a) After a KTBF-eligible horse is registered with the Jockey
Club, a copy of the Jockey Club Certificate of Foal Registration
shall be filed with the KTBF registrar. For horses foaled during or
after 2007, the Jockey Club Certificate of Foal Registration shall
be filed prior to the first race in which the KTBF-eligible horse is en-
tered. For horses foaled prior to 2007, the Jockey Club Certificate of
Foal Registration shall be filed with the application required un-
der subsection (6) of this section.

(b) The KTBF registrar shall record the registration number of
the KTBF-registered horse on the horse's KTBF record.
(c) Except as provided in subsection (6) of this section, a filing
fee shall be due in connection with the filing of the Jockey Club
registration information required by this paragraph in the following
amounts paid at the following times:
1. If the filly is foaled on or prior to December 31 of the
year of foaling, no additional fee shall be due.
2. If the filly is foaled on or prior to December 31 of the
yearing year of the KTBF-registered horse a filing fee of thirty (30)
dollars shall be due.
3. If the filly is foil ed after December 31 of the year-
ning year and prior to the date of the first race of the KTBF-registered
horse, a filing fee of thirty (30) dollars shall be due.

(d) The filing of the Jockey Club registration information
with the official registrar and the payment of the fee, if any, under para-
graph (c) of this subsection shall be necessary to complete regis-
tration of the foal as a KTBF-registered horse and to designate the
horse as a KTBF-registered horse.

(6)(a) For a horse foaled prior to 2007 and eligible to be regis-
tered under Section 2(2) of this administrative regulation, a person
applying for the horse to be listed as a KTBF-registered horse shall
file with the Authority an "Application for Eligibility for the Kentucky
Thoroughbred Breeders' Incentive Fund".
(b) The application shall be filed no later than February 1 of
the year following the year in which the horse has raced in a race that
would normally have been eligible for an incentive from the KTBF.
(c) The filing fee of thirty (30) dollars shall be due with the appli-
cation.

(6) If the information on a form required under this section is

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found to be incorrect or becomes incorrect or changes the person considered to be the qualified breeder is responsible for promptly filing an amended form with the Authority to correct the information within thirty (30) days.

(7) Registration records of the registrar shall be public records and open to public inspection at all normal business hours and times.

Section 5. Qualification of Foal And Qualified Mare. (1) The Authority shall have the right to inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The Authority shall also have the right to request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the Authority:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) In order for the mare to be a qualified mare as defined in Section 11(18)(a) of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation, the breeder desires the mare to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund; (requests permission in writing for the mare to leave Kentucky) and provides information relating to the procedure as requested by the Authority within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the Authority approves the departure of the mare from Kentucky; and

4. The mare remains under the care of a veterinarian during the period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; or

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund; (requests permission in writing for the mare to leave Kentucky) and provides information relating to the training outside of Kentucky as requested by the Authority within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the Authority approves the departure of the mare from Kentucky; and

4. The mare returns to Kentucky within ten (10) days after the end of her racing career.

(5) The executive director shall notify the Authority if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBF [KTBF]-registered horse;

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of a mare may provide notice to the Authority of the desire to withdraw the mare's foal from the KBF by filing a "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund."

Section 6. Calculation. (1) Funds available in the KBF [KTBF] state account resulting from the breeding season relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available to the KBF [KTBF] to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased as follows:

(a) The incentive awarded under the Kentucky first component and the national component shall each be decreased proportionately as provided below, as needed to make the funding adequate:

1. For the Kentucky first component, the award shall be decreased to no less than an amount which is twenty (20) percent of the qualified winners' earnings [purse]; and

2. For the national component, the award shall be decreased to no less than an amount which is eight (8) percent of the qualified winners' earnings [purse].

(b) If the reductions made pursuant to paragraph (a) of this subsection are insufficient, the incentive awarded under the national Grade I stakes race component and the Kentucky claiming component shall be decreased by the same percentage (proportionately) as needed to make the funding adequate. The decrease shall not exceed fifty (50) percent for each component.

(c) If the reductions made pursuant to paragraphs (a) and (b) of this subsection are insufficient, the incentive awarded under the national component shall be decreased as needed to make the funding adequate.

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBF [KTBF] in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains $5,000,000,000 at the time the excess funding is available.

(5) If, at the close of any calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased as provided in this subsection. The order in which an award shall be increased shall be:

(a) An international component shall be added for Group 1 races with an award of no less than $750 and no more than $2,500 per race as the fund permits.

(b) If the funding continues to be in excess of that required for the reserve for the allocations set forth in paragraph (a) of this subsection, the incentives for Group I races and national Grade I stakes races shall be increased to an award of up to $5,000 per race as the fund permits.

(c) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection, the additional funds shall be divided with fifty (50) percent of the additional funds (the "total Kentucky bonus") being awarded to Kentucky races as set forth in subparagraph 1 of this paragraph and fifty (50) percent of the additional funds (the "total national and international bonus") being awarded to national and international races as set forth in paragraph 2 of this paragraph.

1. Kentucky races. The awards for the Kentucky races shall be increased in the following order as the KBF [KTBF] permits:

a. The Incentives for Grade II stakes races and Grade III
stakes races in Kentucky shall be increased equally to an award of up to $25,000 per race; and

b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a), (b), and (c)1a of this subsection, the incentives provided for in Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph, a bonus amount shall be given to each recipient of an award under Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph (the "Kentucky bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(1), (3), (6) of this administrative regulation and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available total Kentucky bonus.

(iii) The factor is the result of the division of the numerator into the denominator.

(iv) The factor shall be multiplied by each individual award granted under the Kentucky bonus components to determine the bonus amount (shall be increased by the identical percentage) for each award.

2. International and national races. The awards for the international and national races shall be increased in the following order as the KBF [KTBIF] permits:

a. The incentives for Grade II stakes race, Grade III stakes race, Group II races and Group III races shall be increased to an award of up to $25,000 per race, and

b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a), (b), and (c)2a of this subsection, and the incentives provided in Section 3(2) and (4) of this administrative regulation and clause a of this subparagraph, a bonus amount shall be given to each recipient of an award under Section 3(2) and (4) of this administrative regulation and clause a of this subparagraph (the "international and national bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available for the total national and international bonus.

(iii) The factor is the result of the division of the numerator into the denominator.

(v) The factor shall be multiplied by each individual award granted under the national and international bonus components to determine the bonus amount (shall be increased by the identical percentage) for each award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each racing year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled. [After the awards are calculated, the recipients of the awards shall be notified] according to the last known address on file with the Authority.

(2) The application shall be on the form "Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund".  

(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall result in forfeiture of the award and the award money shall lapse to the KBF for distribution or building the reserve in the following year [within ninety (90) days of the mailing date] shall result in forfeiture of the award.

Section 8. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director, within thirty (30) days of action or inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The Authority may deny or revoke the registration of a foal or horse if the qualified breeder, or an applicant for qualified breeder status:

(a) Knowingly provides the Authority with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the Authority;

(b) Knowingly fails to furnish within thirty (30) days information the Authority has requested relating to the registration of a foal or horse;

(c) Knowingly violates this administrative regulation in any other manner.

(2) If the Authority denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the Authority shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) The Authority shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has knowingly violated the Authority with false or misleading information, or has knowingly failed to provide the Authority with requested information, or has knowingly violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has knowingly violated the administrative regulation from registering foals to the fund for a period of [from] one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

A person, or his or her designee or representative, fails to appear at the hearing, the Authority may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of [from] one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar to the applicant or qualified breeder from being eligible to receive an incentive from the KBF [KTBIF].

(6) The Authority shall notify the applicant or qualified breeder in writing of the action taken by the Authority.

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

(a) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRMA Form 20-1, (408);

(b) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)", KHRMA Form 20-2, (408);

(c) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)"
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KHRA Form 20-3, (4/06)
(d) "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06);
(e) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06);
(f) "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06);
(a) "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06);
(b) "Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06); and
(c) "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06); [Application for an Award from the Kentucky Thoroughbred Breeders' Incentive Fund] (12/05);
(b) "Application for Thoroughbred Foal Certificate for Eligibility for the Kentucky Breeders' Incentive Fund" (12/06); and
(c) "Application for Eligibility for the Kentucky-Thoroughbred Breeders' Incentive Fund" (12/06).

This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

LAJUANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Lexington Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (502) 564-2040, fax (502) 564-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Underwood
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the conditions and criteria for the distribution of moneys from the Kentucky Thoroughbred Breeders' Incentive Fund.

(b) The necessity of this administrative regulation: KRS 230.800 establishes the Kentucky Thoroughbred Breeders' Incentive Fund. KRS 230.800(2)(a) requires the Kentucky Horse Racing Authority to promulgate regulations by January 1, 2006, to establish the conditions and criteria for the distribution of moneys from the fund. This administrative regulation is necessary to comply with the requirements of KRS 230.800(2)(a).

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.800(2)(a) specifically and directly authorizes the promulgation of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility standards of the fund, the administrative procedures necessary to enforce the standards, and the administration of payments from the fund.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In 2004, approximately 20,000 mares were bred in Kentucky. Assuming a 70% birth rate, 14,000 foals were born as a result of Kentucky breeding. Approximately 9,000 foals were born in Kentucky in 2004. This program is designed to create incentives for the breeders of the approximately 5,000 mares which left Kentucky to have their foals to cause those mares to remain in Kentucky for the duration of the gestation period. The program is designed to retain mares currently in Kentucky as well as attract additional mares during the gestation period. The program may also provide an incentive for breeders to utilize Kentucky stallions. The foals may return to their home state after they are born and may race in other states and continue to be rewarded under this plan. The people who own the farms where the mares are boarded during the gestation period and their employees may have a direct positive economic impact from the Kentucky Thoroughbred Breeders' Incentive Fund. In addition there will be an increase in revenue for many of the ancillary businesses such as the veterinarians, feed supply companies and blacksmiths.

Breeders of horses who qualify under the program will also benefit. Awards will be given to breeders with a small number of horses as well as those with a large number, depending on how successful the racing career is of the horses they breed. Awards are given based on the type of race and the number of qualifying races will vary from year to year. In 2004 in Kentucky, there were 362 allowance races, 327 maiden special races and 113 stakes races that would qualify for an award. In 2004 at the national level, there were 1437 maiden special weight and 1642 allowance races that would qualify for an award. In 2004 at the national level, there were 91 Grade I stakes races that would qualify for an award. 7 different awards will be given relating to claiming races in Kentucky annually. If additional funds are available in the KTBF, awards will be given to additional races so more breeders will benefit. Some breeders may have horses that win multiple races or multiple horses that qualify the breeder for an award, so it is difficult to determine the exact number of breeders who will receive an award. Every breeder, of course, hopes to breed horses that will qualify for awards.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if any, or by the change if it is an amendment: The Breeders' Incentive Fund is designed to create incentives for breeders of mares to leave those mares in Kentucky during the entire gestation period. People involved in all aspects of the thoroughbred breeding industry in Kentucky will be positively impacted economically by this regulation. In addition, the owners and lessees of mares which reside in Kentucky during the gestation period will be positively impacted by this regulation by becoming eligible for monetary incentives if horses they breed finish first or are placed in various races as set forth in the regulation if they are also an incentive for claiming horses in Kentucky based on their earnings.

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

(a) Initially: Initially, it is estimated 7 employees will be necessary to implement the regulation. One will function as the registrar and the registrar will have one assistant. In addition, there will be one (1) investigator. Some costs will be incurred in updating the Authority web site to include a section on the Kentucky Thoroughbred Breeders' Incentive Fund. It is estimated the cost of implementing the regulation will be $300,000.

(b) On a continuing basis. It is estimated the cost of implementing the regulation on an ongoing basis will be $300,000 annually for the next several years.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Pursuant to KRS 230.800, eighty percent (80%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the thoroughbred breeder's incentive fund, together with any other money contributed, appropriated, or allocated to the fund from all other sources. Also pursuant to KRS 230.800, the fund may receive additional state appropriations, gifts, grants, and federal funds, and all interest earned on money in the fund shall be credited to the fund. In addition, fees will be charged for registering
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under the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No additional fees or funding will be required other than those set forth in (6) above and (8) below.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: During the 2006 breeding season, a $30 filing fee shall be due upon initial registration of foals into the incentive program if the filing is made within 45 days of the first cover. During the 2006 breeding season and future breeding seasons, if the filing is made on or prior to August 1 of the breeding season, a $50 filing fee is due. In response to comments from the public, a late filing procedure has been added for an applicant who can show there was good cause for the failure to file application in a timely manner and that the foal otherwise met the eligibility requirements to be a KBF registered horse. The amount of the filing fee will increase depending on the lateness of the filing. The increased filing fee will cover the administrative cost of verifying that the mare was in Kentucky during the entire gestation period. The amount of the filing fee is as follows: (a) for a filing made after August 1 of the breeding season and on or prior to December 31 of the year foaled, the filing fee shall be $75; and (b) for a filing made between January 1 and December 31 of the year foaled, the filing fee shall be $1,500. No other late filing shall be permitted.

(9) TIERING: Is tiering applied? Tiering is applied in this regulation. The regulation provides that the amount of the award varies based on the type of race. The largest awards shall be given to the breeders of the winners of the two most prestigious Kentucky races, the Kentucky Derby and Kentucky Oaks. In addition, larger awards shall be given to the breeders of the winners of Grade I stakes races in Kentucky, other than the Derby and the Oaks. Smaller awards will be given to breeders of winners of other races as classified in the regulation. The tiering is based on reasonable criteria and is uniformly applied to an entire class

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)


RELATES TO: KRS 214.155


NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155 requires a Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited disorders, and to establish a schedule of fees to cover the actual costs to the cabinet for the program. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited disorders as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program. The Cabinet for Health and Family Services is authorized by KRS 214.155 to require that infants be tested for inborn errors of metabolism, such as phenylketonuria (PKU), and to establish a schedule of fees to cover the actual costs to the cabinet for testing samples for inborn errors of metabolism. The purpose of this administrative regulation is to require that infants be tested for phenylketonuria (PKU), galactosemia, sickle cell disease, and leukodystrophy, which are inborn errors of metabolism or other inherited disorders, and to establish the schedule of fees to cover actual costs of testing.

Section 1. Definitions. (1) "Laboratory" means the Division of Laboratory Services within the Cabinet for Health and Family Services, Department for Public Health.

(2) "Program" means the Newborn Screening Program for heritable disorders operated by the Cabinet for Health and Family Services, Department for Public Health.

(3) "Submitter" means any hospital, primary care provider, health department, birthing center, laboratory, or midwife submitting an infant's blood specimen for the purpose of newborn screening.

Section 2. Tests for inborn errors of metabolism or other inherited disorders for newborn infants as part of newborn screening shall include the following tests:

(1) 3-methylcrotonyl-CoA carboxylase deficiency (MCC)

(2) 3-OH 3-CHS glutaric aciduria (HMG)

(3) Argininosuccinic acidemia (ASA)

(4) Beta-ketothiolase deficiency (BKT)

(5) Biotinidase disorder

(6) Carmitate uptake defect (CUD)

(7) Citrullinemia (CIT)

(8) Congenital adrenal hyperplasia (CAH)

(9) Congenital hypothyroidism

(10) Cystic fibrosis

(11) Galactosemia

(12) Glutamic acidemia type I (GA-I)

(13) Hb/9beta-thalassemia (Hb S/Th)

(14) Hb S/S disease (Hb S/S)

(15) Homocystinuria (HCY)

(16) Hypokalemic acidemia (IVA)

(17) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LOCHAD)

(18) Maple syrup urine disease (MSUD)

(19) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD)

(20) Methylnitroacetic acidemia (Cbl A.B)

(21) Methylnitroacetic acidemia mutase deficiency (MUT)

(22) Multiple carboxylic acidemia (MCA)

(23) Phenylketonuria (PKU)

(24) Propionic acidemia (PA)

(25) Short-chain acyl-CoA dehydrogenase deficiency (SCAD)

(26) Sickle cell disease

(27) Triurifunctional protein deficiency (TFP)

(28) Tyrosinemia type I (TYR-I)

(29) Very long-chain acyl-CoA deficiency (VLCAD)

Section 3. Submission Responsibilities. (1) Except as provided in KRS 214.155(4), the administrative officer, or other person in charge of the hospital or institution caring for newborn infants, and the attending physician or midwife shall administer to, or verify administration of tests to, every infant in its care, a blood test to detect inborn errors of metabolism or other inherited disorders identified in Section 2 of this administrative regulation prior to hospital discharge. If a baby is not born in a hospital or institution, the attending physician or midwife shall be responsible for ensuring that these tests are administered between twenty-four (24) and forty-eight (48) hours of age.

(2) A capillary blood specimen shall be obtained from a newborn infant, not requiring an extended stay due to illness or prematurity, between twenty-four (24) and forty-eight (48) hours of age (and discharge from the hospital regardless of the age of the infant at discharge).

(a) If an infant is discharged prior to twenty-four (24) hours of age:

1. A capillary blood specimen shall be obtained from the infant prior to discharge; and

2. A second capillary blood specimen shall be obtained from the infant by a primary care physician or hospital prior to five (5) days of age.

(b) If the infant is to remain in the hospital due to illness or prematurity, the hospital shall obtain the capillary blood specimen from that infant after twenty-four (24) and before seventy-two (72) hours of age.

(c) If an infant is transferred from the birth hospital to another hospital during the newborn hospital stay, the following rules shall apply:

1. The sending hospital shall obtain the capillary blood specimen for the newborn screening blood test if the infant is twenty-four (24) hours of age or more when the infant is transferred to another hospital.
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(b) [32] The receiving hospital shall ensure the newborn screening blood test is performed if the infant is less than twenty-four (24) hours of age when the infant is transferred.

(5) (c) If the information on the filter paper specimen card obtained (submitted) by the submitting and set to the laboratory (hospital) is incomplete or inadequate (the Newborn Screening Program requires a screen to be repeated for any other reason), then the hospital shall submit, upon receipt of the program, shall use all reasonable efforts to locate the responsible for locating the infant and obtain a complete and accurate (obtain) the repeat specimen within ten (10) days. If the submitter is unable to obtain the specimen within ten (10) days, this shall be reported to the program.

(6) (d) Hospitals and submitters (treating hospitals) that are responsible for the collection of the initial specimen (specimens) for newborn screening shall:

(a) Provide to an infant's parent or guardian educational materials regarding newborn screening;

(b) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance;

(c) Notify the program, of the name of the individual designated in Section 6(4)(k) of this section each year in January and if the designated individual changes and;

(d) Develop a written protocol for tracking newborn screening compliance. This protocol shall be submitted to the program each year in January.

1. [Section updated] The protocol shall include a requirement that the name of the physician attending the infant after birth or discharge, or a designation be placed on the filter paper specimen card sent with the infant specimen to the laboratory; and

2. The protocol shall include verification that each infant born at that facility has had a specimen obtained for newborn screening (screening has been tested) on or before discharge and notification shall occur to the program within seven (7) days if any infant is missed.

The hospital or facility that identifies that an infant has not had a specimen obtained for newborn screening prior to discharge shall use every reasonable effort to locate the infant and recommend that they present to the hospital or their primary care provider for a newborn screening specimen to be obtained.

(e) Hospitals or facilities shall report all written refusal. In accordance with KRS 214.155(4) to the program within seven (7) days.

Section 4. Specimen Collection. (1) Capillary blood specimens required in Section 3 of this administrative regulation shall be obtained by a heel stick. Blood from the heel stick shall be applied directly to filter paper specimen card. All circles shall be saturated completely using the heel pad circle on a filter paper specimen card. The specimen collector shall provide, on the filter paper specimen card, information requested by the laboratory.

(2) The capillary blood specimen shall be air dried for three (3) hours and then shall be mailed or sent to the laboratory within twenty-four (24) hours of collection of the specimen or the next business day in which mail or delivery service is available.

(3) Submitters (submitting hospitals) shall submit blood specimens to the Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, P.O. Box 2010, Frankfort, Kentucky 40602.

(4) Specimens processed or tracked under the newborn screening program shall be limited to specimens on infants less than six (6) months of age.

Section 5. Unsatisfactory or Inadequate Specimen. (1) If a specimen is unsatisfactory or inadequate to produce a valid result, the laboratory shall notify the submitter and the primary care provider on the filter paper specimen card by mail that the newborn screen needs to be repeated as soon as possible.

(2) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the laboratory shall notify the parent by mail of the need for a repeat screening test.

Section 6. Special Circumstances - Blood Transfusion. If a newborn infant requires a blood transfusion, the following rules for newborn screening shall apply:

(1) The hospital shall obtain a capillary blood sample for newborn screening prior to the infant being transfused, except in an emergency situation.

(2) If the post-transfusion sample was obtained before twenty-four (24) hours of age, or if it was not obtained due to an emergency situation, then the hospital or primary care provider shall use all reasonable efforts to obtain a repeat capillary blood specimen from the transfused infant and submit it to the laboratory according to the following schedule:

(a) Seventy-two (72) hours after last blood transfusion, re-screen for inborn errors of metabolism and Inherited disorders listed in Section 2 of this administrative regulation; and

(b) Ninety (90) days after last blood transfusion, re-screen for any disorder that relies on red blood cell analysis such as hemoglobinopathies, galactosemia, and biotinidase deficiency.

Section 7. Reporting of Results. (1) Normal Results. Upon receipt of normal lab results, the laboratory shall mail results to the primary care provider and the submitter.

(2) Abnormal Results. (a) Submitters and primary care providers shall receive a copy of all abnormal, presumptive positive, and equivocal results by mail. [The laboratory shall report presumptive-positive or equivocal results of tests for Inherited disorders and Inborn errors of metabolism to the program on behalf of the hospitals and laboratories.]

(b) In addition to receiving mailed results, primary care providers shall be notified of presumptive positive and equivocal results in the following manner:

1. Upon receipt of a presumptive positive lab result the program shall immediately notify the primary care provider listed on the filter paper specimen card of the result and recommend appropriate follow-up testing.

2. Upon receipt of an equivocal result, the program shall notify the primary care provider on the filter paper specimen card within two (2) business days of the result and next step recommendations.

3. If the program is unable to ascertain a correct primary care provider for a specimen to be obtained, for repeat screen or referral they shall contact the parent of the infant.

4. If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

5. The Cabinet for Health and Family Services shall share pertinent test results with state university-based specialty clinics for primary care providers who inform the cabinet that they are treating the infant who received the test, and may share pertinent test results with the local health department in the infant's county of residence that conducts newborn screening follow-up activities. These specialty clinics or primary care providers shall report results of diagnostic testing to the program within thirty (30) days or earlier upon request.

(c) The laboratory shall report abnormal, presumptive positive, or equivocal results of tests for Inherited disorders and Inborn errors of metabolism to the program on behalf of the hospitals and submitters.

(d) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 8. Newborn Screening Fees. (1) Submitters obtaining and sending (Hospitals or other authorized institutions or individuals) a blood specimen to the laboratory shall be billed a fee of $53.50 for the initial newborn screening test.

(2) Submitters obtaining and sending (Hospitals or other authorized institutions or individuals) a repeat blood specimen to the laboratory shall not be charged an additional fee of $53.50.

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(3) Fees due the Cabinet for Health and Family Services shall be collected through a monthly billing system.

Section 1. Tests for inborn errors of metabolism or other inherited disorders for newborns shall be completed as follows:

(1) Except as provided in KRS 214.155(2), the administrative officer, or other person in charge of the hospital or institution taking for infants twenty-eight (28) days or less of age, and the attending physician or midwife shall have administered to every infant in its care a blood test to detect phenylketonuria, galactosemia, sickle cell disease, and hypothyroidism. If a baby is born in a hospital or institution, the attending physician or midwife shall be solely responsible for causing those tests to be administered at no less than forty-eight (48) hours of age more than seven (7) days of life.

(2) A capillary blood specimen shall be obtained from each infant before he leaves the hospital regardless of the age of the infant. All infants screened prior to forty-eight (48) hours of life shall be re-screened for phenylketonuria (PKU) and congenital hypothyroidism prior to three (3) weeks of life.

(3) If an infant is transferred from one (1) hospital to another during the newborn hospital stay, the following rules shall apply:

(a) If the infant is forty-eight (48) hours of age or more at the time of transfer to another hospital, testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism shall be the responsibility of the receiving hospital.

(b) If the infant is less than forty-eight (48) hours of age at the time of transfer, the hospital discharging the infant shall be responsible for ensuring that the infant is screened for these disorders.

(4) A capillary blood specimen shall be obtained on day seven (7) of life from all infants that are still hospitalized and, if premature, or receiving parenteral feeding on that day, for the purpose of screening for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism, unless the infant has already been tested in accordance with subsection (3) of this section.

(5) A repeat capillary blood specimen shall be obtained from all infants who were born with antibiotic treatment when the original specimen was obtained or within the previous five (5) days. This repeat specimen shall be obtained five (5) to seven (7) days after completing the antibiotic treatment for screening for phenylketonuria (PKU) and galactosemia.

(6) A repeat capillary blood specimen shall be obtained for screening for phenylketonuria (PKU) from all infants who received parenteral feeding prior to the initial screening. The specimen shall be obtained between forty-eight (48) and seventy-two (72) hours after initiation of feeding.

(7) A repeat capillary blood specimen shall be obtained from all infants who received transfusions prior to the initial screening, according to the following schedule:

(a) Forty-eight (48) to seventy-two (72) hours after transfusion; re-screen for phenylketonuria (PKU) and congenital hypothyroidism.

(b) Sixty (60) to sixty-five (65) days after transfusion; re-screen for galactosemia.

(8) One hundred twenty (120) days after transfusion; re-screen for sickle cell disease.

(9) Capillary blood specimens required in subsections (1) through (6) of this section shall be obtained by a heel stick. Blood from the heel stick shall be applied directly to filter paper.

(10) Specimens obtained as directed in subsections (1) through (7) of this section shall be mailed or sent to the approved testing laboratory within twenty-four (24) hours of collection of the specimen.

(11) Hospitals and institutions may submit blood samples to the Cabinet for Human Resources, Department for Health Services, Division of Laboratory Services, 100 Sower Boulevard, Suite 204, Frankfort, Kentucky 40621. The Division for Health Services, Division of Laboratory Services, shall report positive results of tests for inborn errors of metabolism as required by KRS 214.155 on behalf of the hospitals and institutions. Hospitals and institutions may conduct their own testing program, within the institution or through a licensed medical laboratory. The cabinet shall be notified and the laboratory procedures approved. A hospital or licensed medical laboratory may be required by the cabinet to demonstrate proficiency in the performance of tests. Hospitals and institutions which conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of testing to the attending physician and shall report positive test results to the Department for Health Services no later than two (2) working days after the date of testing.

(12) All hospitals that conduct their own testing for congenital hypothyroidism within the institution or through a licensed medical laboratory shall provide a TSH on the same blood sample whose initial T4 test resulted in a low value level.

(13) All hospitals which do their own testing or send their blood specimens to a licensed medical laboratory for testing shall complete semiannual or other reports concerning the testing requested by the Division of Laboratory Services or the Division of Maternal and Child Health.

(14) The Cabinet for Human Resources may share test results with physicians and practitioners other than the attending physician, who inform the cabinet that they are treating the infant who received the test, and with the local health department in the infant's county of residence.

(15) Hospitals or other authorized institutions or individuals submitting blood samples to the Cabinet for Human Resources shall be reimbursed for each test according to the following schedule:

<table>
<thead>
<tr>
<th>Test Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>PKU only</td>
<td>$2.50 per test</td>
</tr>
<tr>
<td>US lactoseemia</td>
<td>$0.50 per test</td>
</tr>
<tr>
<td>Hypothyroid</td>
<td>$8.50 per test</td>
</tr>
<tr>
<td>Sickle cell disease only</td>
<td>$2.50 per test</td>
</tr>
<tr>
<td>Combination test for all</td>
<td>$14.50</td>
</tr>
</tbody>
</table>

(16) Fees due the Cabinet for Human Resources shall be collected through a monthly billing system.

MARK BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 9 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: Sandy Fawbush
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation authorizes the cabinet to require infants have a newborn screening blood test for 29 disorders and establishes a fee to cover the actual cost to the cabinet for the Newborn Screening Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow and fund the expansion of the newborn screening blood test program from the current 4 disorders to the 29 disorders to begin July 1, 2005.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 214.155 authorizes the cabinet to promulgate administrative regulations for operating a newborn screening program for inheritable disorders.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary guidelines for the newborn screening program by prescribing the time and manner of obtaining a specimen, reporting of results, and establishment of a fee.
(2) If 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 establishes new guidelines for specimen collection, new fees, and establishes a parent education com-
ponent to the Newborn Screening Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish new testing procedures for an expanded number of conditions, as well as establishment of fees to support the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the terms and manner of obtaining specimen, prescribes the manner of testing the specimen, reporting the results and increases the current fee of $14.50 to $53.50 to support the Newborn Screening Program.

(d) How the amendment will assist in the effective administration of the statutes. This amendment assists in the effective administration of the statutes by implementing an increased fee to support expanding the program from the current 4 disorders to 29 disorders and assures that screening of all newborns occurs in a timely fashion.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the Department for Public Health, university specialty clinics, birthing hospitals, primary care physicians, midwives, submitters of initial newborn screening tests and parents.

(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 be affected as follows:

(a) The Department for Public Health will have an increase in the number of infants requiring case management for short term follow up and/or increased visits to the universes;

(b) University specialty clinics will see an increase in referrals made to them for diagnosis and long-term treatment of the disorders detected;

(c) Birthing hospitals will have a newborn screening coordinator, and a protocol for assuring all newborns in their care receive a screening test;

(d) Primary care physicians and midwives caring for newborns will be responsible for assuring that newborn screening blood test performed;

(e) Submitters of initial newborn screening tests will see an increase in the fee charged, and

(f) Parents will receive education materials regarding the newborn screening tests that are performed.

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

(a) Initially: Budget Neutral

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds resulting from charging a fee to submitters for the newborn screening blood tests. Additionally, in the first year, master tobacco settlement funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will need to be an increase in the fee charged for the newborn screening blood test from $14.50 to $53.50.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation increases the fee charged for newborn screening blood testing.

(9) Tiering: Is tiering applied? Tiering of the fee increase will not be applied with this administrative regulation, because the administrative regulation applies to all newborn infants across the state and applies equally to all entities across the state regulated by it. The fee increase will be $53.50 to purchase new equipment and reagents, train the hospital staff, and provide subspecialty consultations at the academic medical centers when potential cases are identified as the lab progressively expands the testing panel to 29 disorders.

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 whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect local government.

3. State the aspect or service of local government to which this administrative regulation relates: Local Health departments will see an increase in the fee for initial newborn screening tests.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Minimal

Expenditures (+/-): Minimal

There is no anticipated impact upon the revenues of local government due to the implementation of this administrative regulation. The new payment system is designed to be budget neutral for local health departments.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Long Term Care and Community Alternatives

(Amended After Comments)

907 KAR 1:044. Community mental health center services.


NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 6, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services]. The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program [of Medicaid Assistance]. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes [sets forth] the provisions for community mental health center (CMHC) services [relating to services provided by Mental Health Centers for which payment shall be made by the Medicaid Program to both the categorical needy and the medically needy].

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medicaid Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required;

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting, or

(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if their employment with the center continues, for the purpose of providing Medicaid Program reimbursable services.

- 2039 -
Section 2. Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. The Community Mental Health Manual dated July 1, 1983 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximately cost.

Section 3. Covered Services. The following services provided by a participating community mental health center shall be covered if provided in accordance with this administrative regulation and the Community Mental Health Manual, and if they meet all applicable state and federal laws and regulations: (mental health centers shall be considered covered when rendered within Kentucky Medicaid Program guidelines as shown in the Community Mental Health Manual):

1. Inpatient services;
2. Outpatient services;
3. Therapeutic rehabilitation services;
4. Emergency services; and
5. Personal care home services.

Section 4. Electronic Documents and Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with requirements established in HRS 309.101 to 309.120 and all applicable state and federal laws and regulations.

2. A CMHC provider choosing to utilize electronic signatures shall:
   a. Develop and implement a written security policy which shall:
      1. Be approved by each of the provider's employees, officers, agents, and contractors;
      2. Specify which individuals have access to which electronic signatures and password authorization;
   b. Ensure that electronic signatures are created, transmitted and stored securely; and
   c. Develop a consent form which shall:
      1. Be consented to and executed by each individual utilizing an electronic signature;
      2. Attest to the signature's authenticity; and
      3. Include a statement indicating that the individual has been notified of their responsibility in allowing the use of the electronic signature.

Section 5. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

2. An appeal of a department decision regarding a Medicaid based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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


2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1999.]

SHANNON TURNER, J.D., Commissioner
MIKE BURNSIDE, Deputy Secretary
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or increase any fees.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Kentucky Children's Health Insurance Program
(Amended After Comments)

807 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520, 605.115, 20 U.S.C. 33
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(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 Medical Assistance Program into 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 Medicaid services to Kentucky's indigent citizen. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under the Individuals with Disabilities Education Act (20 U.S.C. 33).

Section 1. Definitions. (1) "Admissions and release committees" or "ARC" means a group of individuals required by 707 KAR 1:320 and 34 C.F.R. 300.344, who are responsible for developing, reviewing, and, as necessary, revising the individualized education program for a child with a disability.

(2) "Assistive technology device" means an item, piece of equipment, or product system that is:
(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and
(b) Medically necessary to implement the health services in the child's individualized education program.

(3) "Collateral services" means instruction and consultation to a child, the child's family, teacher, or another service provider which is necessary to communicate and enhance the effectiveness of the child's treatment and management programs.

(4) "Department of Education" means the Commonwealth of Kentucky, Department of Education.

(5) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.


(7) "Recipient" means a Medicaid-eligible recipient under the age of twenty-one (21), including the entire month in which the child turns twenty-one (21).

(8) "School-based health services" or "SBHS" means medically-necessary health services provided for in 707 KAR 1:320 and as specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

(10) "Special transportation" means a special arrangement, special equipment, or a special vehicle which is appropriate for the child's disability.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall be certified by the Department of Education.

(2) The Department of Education shall [may] grant certification to a district that agrees to:
(a) Provide services as required by IDEA, 20 U.S.C. 33, and as specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;
(b) Comply with the requirements for provision of services required by IDEA as outlined in 707 KAR 1:320;
(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;
(d) Provide the Department of Education with a proposed quality assurance outline;
(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. 33; and
(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:
        1. Name;
        2. Credentials;
        3. Hourly salary;
        4. Hourly fringe benefit costs [percentage]; and
        5. Hourly contract amounts.

(3) The Department for Medicaid services shall [may] grant Medicaid enrollment to a provider who:
(a) Meets the criteria in subsection (2) of this section; and
(b) Is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based provider shall:
(a) Submit to an annual review by the Department of Education to ensure compliance with the standards for continued participation as a Medicaid provider;
(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;
(c) Take action as specified by the Department of Education to correct a deficiency found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or any administrative regulation;
(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;
(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services; and
(f) Maintain records on each Medicaid-eligible recipient who receives services reimbursed by Medicaid. These records shall:
        1. Identify the child, services performed, and quantity or units of service;
        2. Be signed and dated by the professional who provided or supervised the service;
        3. Be legible with statements written in an objective manner;
        4. Indicate progress made being made, any change in treatment, and response to the treatment; and
        5. Be maintained for a minimum of five (5) years plus any additional time required by law.

Section 3 Covered Services. (1) A school-based health service that is included in an authorized IEP and provided in accordance with this administrative regulation shall be considered medi-
cally necessary and shall not be subject to additional Medicaid prior-authorization requirements.

(2) The following services shall be covered if provided to address a medical or mental disability and assist the individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individualized education program:

(a) Nursing;
(b) Audiology;
(c) Speech and language;
(d) Occupational therapy;
(e) Physical therapy;
(f) Mental health;
(g) Incidental interpreter services provided in conjunction with another covered service;
(h) Orientation and mobility services;
(i) Respiratory therapy;
(j) Assistive technology devices and appropriate related evaluations if the devices purchased by the Medicaid Program become the property of the recipient; and
(k) Special transportation with the following limitations:

1. A special transportation service shall be limited to transportation to a recipient or to receive a Medicaid-covered service at:
   a. A site other than the school building in which the child is enrolled for general education purposes; [or]
   b. The child’s home if the child is a home-bound student and receives general education services at home; or
   c. The school building where the child receives the Medicaid-covered service. Special transportation to the school building from the child’s home or other site and return special transportation from the school building to the child’s home or other site shall be covered for the day the Medicaid-covered service is provided at the school building;[1]

2. A special transportation service shall be provided using a type of vehicle which:
   a. Meets the specifications established by KRS 156.153, 702 KAR 5.060, and 702 KAR 5:130; and
   b. Is appropriate for the child’s disability as determined by the ARC in accordance with 702 KAR 5:100; and

3. A special transportation service shall not be covered for special transportation:
   a. To and from home and the school; or
   b. Provided by a member of the recipient’s household if that person is not an employee of the school district.

(3) A covered service:
   (a) Shall not be limited by site of service;
   (b) Shall [May] be provided in:
      1. A group of no more than six (6); or
      2. In a one-on-one situation; and
   (c) May include assessment, evaluation, treatment, and collateral components.

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:
   (a) An advanced registered nurse practitioner with a current license from the Kentucky Board of Nursing;
   (b) A registered nurse with a current license from the Kentucky Board of Nursing;
   (c) A licensed practical nurse with a current license issued by the Kentucky Board of Nursing, under appropriate supervision and delegated authority; or
   (d) A health aide if:
      1. The aide is under the supervision of a specific registered nurse or advanced registered nurse practitioner;
      2. The supervising registered nurse or advanced registered nurse practitioner has trained the aide for the specific nursing service for the specific recipient; and

3. The supervising registered nurse or advanced registered nurse practitioner has verified in writing that the aide has appropriate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech-Language Pathology and Audiology.

(3) Speech and language services shall be provided by:
   (a) A speech-language pathologist with:
      1. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or
      2. A masters-level certification issued by the Kentucky Education Professional Standards Board; or
   (b) A speech-language pathology assistant who:
      1. Has:
         a. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or
         b. A baccalaureate-level certification issued by the Kentucky Educational Professional Standards Board; and

2. Is under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.03, 334A.060 and 161.033.

(4) Occupational therapy services shall be provided by:
   (a) An occupational therapist with a current license from the Kentucky Board of Licensure for Occupational Therapy;
   (b) An occupational therapy assistant who is:
      1. Licensed by the Kentucky Board of Licensure for Occupational Therapy to assist in the practice of occupational therapy; and
      2. Under the supervision of an occupational therapist; or
   (c) An unlicensed occupational therapy aide who:
      1. Provides supportive services to occupational therapists and occupational therapy assistants; and
      2. Is under the direct supervision of a licensed occupational therapist.

(5) Physical therapy services shall be provided by:
   (a) A physical therapist with a current license from the State Board of Physical Therapy;
   (b) A physical therapist assistant with a current license from the State Board of Physical Therapy under the supervision of a licensed physical therapist;
   (c) A physical therapist with a temporary permit issued by the State Board of Physical Therapy under the supervision of a licensed physical therapist;
   (d) A student of physical therapy under the supervision of a licensed physical therapist; or
   (e) A physical therapy aide under the direct on-site supervision of:
      1. Licensed physical therapist; or
      2. Licensed physical therapist assistant in accordance with the provisions of 201 KAR 22.010, Section 1.

(6) Mental health services shall be provided by:
   (a) An individual currently licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS Chapter 319 as a:
      1. Licensed psychologist;
      2. Licensed psychological practitioner;
      3. Certified psychologist with autonomous functioning;
      4. Certified psychologist; or
      5. Licensed psychological associate;
   (b) A school psychologist currently certified by the Kentucky Education Professional Standards Board;
   (c) A school social worker currently certified by the Kentucky Education Professional Standards Board;
   (d) A licensed clinical social worker currently licensed by the Kentucky Board of Social Work;
   (e) A licensed social worker currently licensed by the Kentucky Board of Social Work;
   (f) A certified social worker currently licensed by the Kentucky Board of Social Work;
   (g) A guidance counselor currently certified by the Kentucky Education Professional Standards Board;
   (h) A psychometrist currently certified by the Kentucky Education Professional Standards Board; or[6]
   (i) An advanced registered nurse practitioner who has a spe-
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(7) In order to provide an incidental interpreter service, an interpreter (incidental interpreter services shall be provided in accordance with the following:
(a) Effective July 1, 2003, interpreters shall be licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing as required by KRS 309.300 to 309.319;
(b) Minimum qualifications after 1996 and before July 1, 2003 shall be as follows:
1. Sign language interpreters shall:
   a. Be certified by the Registry of Interpreters for the Deaf or other national certifying body or
   b. Hold the intermediate level of the Kentucky Interpreting Skills Sequencing.
2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association's certification examination; and
3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.
(d) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:
   (a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP);
   (b) National Blindness Professional Certification Board (NBPCB).
(e) Respiratory therapy services shall be provided by a practitioner certified by the Kentucky Board of Respiratory Care as required by KRS 314A.010 (Chapter 314).

Section 5. Reimbursement. (1) Reimbursement for SBHS shall be provided in accordance with 907 KAR 1:035, Section 5 [6].
(2) School-based health services providers shall certify expenditure of state or local funds to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 5:255.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: April 11, 2006
FILED WITH LRC: April 11, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage provisions for school-based health services.
(b) The necessity of this administrative regulation: This administrative regulation enables the Department for Medicaid Services (DNS) to cover school-based health services for Medicaid-eligible children.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, and 605.115 authorize DNS to cover school-based health services for Medicaid-eligible children.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes Medicaid coverage provisions for school-based health services for Medicaid-eligible children.
(2) If 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 adds licensed professional clinical counselors and licensed marriage and family therapists to school-based mental health service provider types and clarifies other policies.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enhance recipient access to school-based health services and to clarify other policies in regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by adding licensed professional clinical counselors and licensed marriage and family therapists to school-based mental health service provider types and by clarifying other policies in regulation.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by adding licensed professional clinical counselors and licensed marriage and family therapists to school-based mental health service provider types and by clarifying other policies in regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 90 school districts and 10,000 school-aged children who are Medicaid recipients will be affected by the amendments to 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: This amendment will enhance recipient access to school-based health services by enhancing mental health service provider types.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no impact on the DMS budget as a result of these changes.
(b) On a continuing basis: There will be no impact on the DMS budget as a result of these changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementing and enforcing this administrative regulation will be federal funds authorized under Title XIX of the Social Security Act, and state revenues provided by the Department for Education.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish fees or increase any fees.
(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as Sections 2 and 3 of the Kentucky Constitution.
PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 14, 2006

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

18 KAR 1:050. Local educator assignment data.

RELATES TO: KRS 161.020, 161.029, 161.030, 161.1221
STATUTORY AUTHORITY: KRS 161.1221
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020,
161.028, and 161.030 require that a teacher and other professional
school personnel hold a certificate of legal qualification for his or
her respective position to be issued by the Education Professional
Standards Board. KRS 161.1221 requires that the Education Pro-
fessional Standards Board identify all professional school person-
el assigned out-of-field. This administrative regulation establishes
the requirements for public school districts for reporting educator
assignment data used to determine out-of-field teaching.

Section 1. Definitions. (1) "Content area" means an academic
area as defined in the Kentucky Program of Studies established in
704 KAR 3.303 or the Curriculum Framework established by the
Kentucky Department of Education and KRS 158.6451.
(2) "Course" means a unit of study created by a district or
school, involving one (1) or more academic content areas, inten-
ted to be provided to one (1) or more population types.
(3) "Course Identifier" means a number that uniquely Identifies
a unit of study provided by a public school or district.
(4) "Grade" means a code supplied by the Kentucky Depart-
ment of Education.
(5) "Organization ID" means a unique number that Identifies
a school or district across data systems or within the same data
system.
(6) "Population" means a group of students defined by similar
demographic or disability criteria.
(7) "Unique staff ID" means a number that identifies a particu-
lar person across data systems or within the same data system.
(8) "Work assignment" means a job function requiring certifica-
tion by the Education Professional Standards Board.

Section 2. Public school districts shall report information about
course offerings and assignments of all certified staff to the Educa-
tion Professional Standards Board.

Section 3. Courses shall be identified by providing the Educa-
tion Professional Standards Board with the following information:
(1) The name and course identifier of each course;
(2) The content area or areas covered by the course;
(3) The student population or populations for which the course
is intended; and
(4) The lowest and highest grades for which the course is inten-
ted.

Section 4. (1) Teacher assignment information shall include the
following information:
(a) The name and unique staff ID of the teacher;
(b) The teacher work assignment;
(c) The organization ID of the district or school of the assign-
ment;
(d) The course identifier for each course established in Section
3 of this administrative regulation;
(e) The lowest and highest grade of students enrolled in each
course;
(f) The number of students enrolled in each course; and
(g) The total number of hours of staff time devoted to the as-
signment over the school year.
(2) Administrator assignment information shall include the fol-
lowing information:
(a) The name and unique staff ID of the administrator;
(b) The administrator work assignment;
(c) The organization ID of the district or school of the assign-
ment; and
(d) The total number of hours of staff time devoted to the as-
signment over the school year.

Section 5. (1) Each school district shall provide two (2) as-
signment reports to the Education Professional Standards Board
each school year.
(2)(a) The first assignment report shall be provided to the Edu-
cation Professional Standards Board no later than November [Oct-
ober] 1
(b) The second assignment report shall be provided to the Educa-
tion Professional Standards Board no later than March [Feb-
uary] 1

Section 6. (1) The school districts shall submit all required data
electronically via software selected by the district and approved by
the Kentucky Department of Education under requirements estab-
lished in KRS 156.670 and 701 KAR 5:110.
(2) The school districts shall conform to the content and format
specified in "Education Professional Standards Board Local Edu-
cator Assignment Data Reporting Standards and Procedures".
(3) The Education Professional Standards Board shall work
with the Kentucky Department of Education to create a seamless
data reporting system for school districts.
(4) The Education Professional Standards Board or its design-
ee shall provide school districts with technical assistance and
support necessary to collect the required information.

Section 7. (1) The Education Professional Standards Board
shall maintain a publicly-available set of data-reporting standards,
which shall be updated yearly. These shall include:
(a) A list or downloadable file of content areas;
(b) A list or downloadable file of population types; and
(c) A set of standards for course and assignment reporting.
The list of courses and work assignments shall be available as a
downloadable file.
(2)(a) These standards shall be available on the Education Profes-
sional Standards Board Web site at www.kyepsb.net.
(b) These standards shall be available in "Education Profes-
sional Standards Board Local Educator Assignment Data Report-
ing Standards and Procedures".

Section 8. Incorporation by Reference. (1) "Education Profes-
sional Standards Board Local Educator Assignment Data Report-
ing Standards and Procedures", 2002-2003 School Year, is Incor-
porated by reference.
(2) This material may be Inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Education Professional
Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Ken-
ty. Individuals interested in being heard at this hearing shall
notify this agency in writing by May 19, 2006, five work days prior
to the hearing of their intent to attend. If no notification 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 admin-
istrative regulation. If you do not wish to be heard at the public
hearing, you may submit written comments on the proposed ad-
mnistrative regulation. Written comments shall be accepted until
May 31, 2006. 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: Brenda Dinkins Allen, Education Profes-
sional Standards Board, 100 Airport Road, 3rd Floor, Frankfort,
Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the process surrounding the Education Professional Standards Board’s collection of the Local Educator Assignment Data from each of the 176 public school districts for a determination of the number of teachers teaching out of their certification field.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 161.1221 requires that the Education Professional Standards Board identify all professional school personnel assigned out-of-field.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.1221 requires that the Education Professional Standards Board identify all professional personnel assigned out of field and this regulation provides the detail for district submission of that information to the Education Professional Standards Board and the Education Professional Standards Board’s method of reporting the information to the Commissioner of the Department of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides timelines and explicit detail for what is to be reported.

(2) If 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 dates by which school districts are required to report the information to the Education Professional Standards Board, providing the districts with an additional month for both the fall and the spring reporting periods.

(b) The necessity of this amendment to this regulation: The amendment will allow the districts additional time to determine the assignments of their teachers for each class period of the day. It will also provide the opportunity to correct incorrect assignments and have a properly credentialed individual in the class before the final report is completed and reported to the Commissioner of the Department of Education.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute, KRS 161.1221 requires that the Education Professional Standards Board identify teachers assigned out of field. The additional 30 days allowed for district reporting to the Education Professional Standards Board will provide the opportunity for those who are not properly assigned to obtain the appropriate credential, or to be reassigned to an appropriate classroom.

(d) How the amendment will assist in the effective administration of the statute: The amendment will positively affect the administration of the statute because it is anticipated that the information, once provided, will be more accurate because it will have afforded sufficient time to rectify the assignment problem.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 Kentucky school districts and approximately 60,000 certified education professionals.

(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: Districts will be positively impacted by the extension of the deadline, allowing a more careful information gathering process and the opportunity for correction. The Education Professional Standards Board will be positively affected by the correction of assignment problems prior to submission, rather than after submission. The Department of Education will be positively affected because it will have the benefit of the most accurate information that can be used with more certainty with regard to a decision to withhold SEEK funding from that particular district.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Innately: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to districts, the Education Professional Standards Board or the Department of Education.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of the regulation.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:060. School nurse.

RELATES TO: KRS 161.020, [146-026] 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.030 [146.020, 146.060]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(1) vests the Education Professional Standards Board with the authority to certify all teachers and other professional school personnel in the public schools. KRS 161.030(2) requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a certificate, and KRS 161.030(1) requires all certificates to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standard for the issuance of a certificate for the position of school nurse.

Section 1. Definition. "Related Field" means an area that is applicable to the area of "nursing practice" as codified in KRS 314.011(6), including psychology, biological, physical, or social sciences.

Section 2. Requirements for the Provisional Certificate for School Nurse. (1) The provisional certificate for school nurse shall be issued upon application to the Education Professional Standards Board using the "Form TC-1, Application for Kentucky Certification or Change in Salary, Rank," incorporated by reference.

(2) The Provisional Certificate for School Nurse shall be issued for a period of five (5) years to an individual upon application and submission of proof of the following:
(a) A valid license as a registered nurse issued by the Kentucky Board of Nursing;
(b) A minimum of a diploma or Associate's Degree in nursing from an accredited school of nursing; and
(c) A minimum of three (3) years of nursing experience within the last five (5) years.

(3) The Provisional Certificate for School Nurse may be renewed for subsequent five (5) year periods upon application using "Form TC-2, Application for Certificate Renewal/Duplication," incorporated by reference, and upon submission of proof of the following:
(a) A valid license as a registered nurse from the Kentucky Board of Nursing; and
(b) Fifteen (15) credit hours of coursework from an accredited Bachelor of Science program in nursing program or a related field leading to a Professional Certificate for School Nurse.

(4) The Provisional Certificate for School Nurse shall be issued at Rank III.
Section 3. Requirements for the Professional Certificate for School Nurse. (1) The Professional Certificate for School Nurse shall be issued upon application to the Education Professional Standards Board using Form TC-1.

(2) The Professional Certificate for School Nurse shall be issued for a period of five (5) years to an individual upon application and submission of proof of the following:
(a) A valid license as a Registered Nurse issued by the Kentucky Board of Nursing;
(b) A Bachelor of Science degree in Nursing or a related field from an accredited school of nursing and one of the following:
   1. Three (3) years of post-baccalaureate nurse experience within the past five (5) years; or
   2. School Nurse Certification from the National Association of School Nurses;
(c) The Professional Certificate for School Nurse may be renewed upon application using Form TC-2 and submission of proof of the following:
   (a) A valid license as a Registered Nurse issued by the Kentucky Board of Nursing;
   (b) Three (3) years of experience as a school nurse during the past five (5) years and one (1) of the following:
      1. 120 (90 contact hours of continuing education; or
      2. Nine (9) credit hours of course work from an accredited college or university related to school nurse practice;
(d) The Professional Certificate for School Nurse shall be issued at Rank II.

Section 4. Requirements for the Advanced School Nurse Certificate. (1) The Advanced School Nurse Certificate shall be issued upon application to the Education Professional Standards Board using Form TC-1.

(2) The Advanced School Nurse Certificate shall be issued upon application and submission of proof of documentation of completion of one (1) of the following two (2) options:
(a) Option 1:
   1. A valid license as a registered nurse issued by the Kentucky Board of Nursing;
   2. A Bachelor of Science Degree in Nursing and
   3. A Master's Degree in a related field,
(b) Option 2:
   1. A valid license as a Registered Nurse issued by the Kentucky Board of Nursing and
   2. A Master's Degree in Nursing.

(3) The Advanced School Nurse Certificate shall be issued for an initial period of five (5) years and may be renewed for subsequent five (5) year periods upon application and submission of proof of the following:
(a) A valid license as a registered nurse issued by the Kentucky Board of Nursing;
(b) Three (3) years of experience as a school nurse within the most recent five (5) year period;
(c) The Advanced School Nurse Certificate shall be issued at Rank I.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Form TC-1, Application for Kentucky Certification or Change in Salary Rank", 10/2005, and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., in accordance with the pertinent Kentucky statutes and administrative regulations of the State Board of Education to an applicant who is licensed as a registered nurse by the Kentucky Board of Nursing. Education and Nurse Registration and who has completed the approved program of preparation which corresponds to the certificate; at a lead education institution approved under the standards and procedures included in the Kentucky State Plan for the Approval of Preparation Programs for the Certification of Professional School Personnel.

(2) Registered nurses serving in an approved position of school nurse during the 1978-79 or the 1979-80 school year may be issued the provisional certificate for school nurse for a duration period of five (5) years and renewable for subsequent five (5) year periods upon completion of three (3) years experience as a school nurse during each five (5) year period.

(3) The provisional certificate for school nurse issued after the 1978-79 school year shall be issued for a duration period of five (5) years and shall require the completion of the fifteen (15)-semester hour curriculum for school nurses for the first renewal. Subsequent renewals shall require the completion of fifteen (15)-semester hours additional credit toward the completion of the bachelor's degree. Upon completion of the bachelor's degree, the certificate may be renewed on three (3)-year experience as a school nurse during each five (5)-year renewal period.

TOM STULL, Chair
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 26th, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2006, five work days prior to hearing, of their intent to attend. If no notice 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. If you do not wish to be heard at the public hearing, you must submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. 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: Brenda Dinkles Allen, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for school nurses.
(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a professional certificate for Kentucky's public school personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for the three levels of certification for school nurses and the renewal requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the provisions of the regulation and denotes the Education Professional Standards Board as the responsible agency and provides the detail for the requirements for each of the three school nurse certificates that are currently available.
(b) The necessity of this amendment to this regulation: The amendment updates the provisions of the regulation which was last amended in 1980. It provides that the Education Professional Standards Board is the responsible agency and it provides a Professional and Advanced Nurse Certificates.
Section 1. Definitions. (1) "ACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPBS.

(4) "EPBS" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) "State accreditation" means recognition by the EPBS that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state, and
(b) May be accredited by NCATE.

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and
(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on candidate qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher-education and school faculty, diverse candidates, and diverse students in P-12 schools.

4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(a) Be accredited by the state through the EPBS under this administrative regulation as a condition of offering an educator preparation unit and approval of a program to prepare an educator.
certification program or a program leading to rank change; and (b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates.

(2) Stage One.
(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB indicating their intent to establish an educator preparation program.
(b) The EPSB staff shall make a technical visit to the institution.
(c) The institution shall submit the following documentation:
1. Program descriptions required by Section 11 of this administrative regulation;
2. Continuous assessment plan required by Section 11 of this administrative regulation; and
3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.
(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.
(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.
(3) Stage Two.
(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.
(b) The team shall be comprised of:
1. One (1) representative from a public postsecondary institution;
2. One (1) representative from an independent postsecondary institution; and
3. One (1) representative from the Kentucky Education Association.
(c) The team shall submit a written report of its findings to the EPSB.
(d) The EPSB shall provide a copy of the written report to the institution.
(e) The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team’s report.
(f) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:
1. Approval;
2. Approval with conditions, or
3. Denial of approval.
(4) Stage Three.
(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:
1. Approval;
2. Approval with conditions, or
3. Denial of approval.
(b) An institution receiving approval or approval with conditions shall:
1. Hold this temporary authorization for two (2) years; and
2. Continue the developmental process and the first accreditation process established in this administrative regulation.
(c) An institution denied temporary authorization may reapply.
(d) During the two (2) year period of temporary authorization, the institution shall:
1. Admit candidates;
2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
3. Report regularly to the EPSB on the institution's progress.
(e) During the two (2) year period of temporary authorization, the EPSB:
1. May schedule additional technical visits; and
2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data
(f) Stage Four.
(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.
(b) All further accreditation activities shall be governed by the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution.

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.
(2) The accreditation and program approval schedule shall be directed to the official designee by the institution that is the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.
(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.
(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.
(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.
(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about faculty and students in each approved program, progress made in addressing areas for improvement identified in its last accreditation evaluation, and major program developments in each NCATE standard.
(b) The institution shall use the data system identified by the EPSB.
(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.
(b) The EPSB may pursue action against the unit based on data received in the report.
(3) The Reading Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.
(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 12 of this administrative regulation.
(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.
(b) A content program review committee shall examine program content and faculty expertise.
(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.
(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.
Section 7. Continuous Assessment Review Committee. (1) The EPBS shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPBS shall appoint and train a Reading Committee representative of the constituent groups to the EPBS.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from the College of Education for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:
(a) Review the preconditions documents prepared by the institution;
and
(b) Send to the EPBS a preconditions report indicating whether a preconditions has been satisfied by documentation. If a preconditions has not been satisfied, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:
(a) Determine that a submitted material meets requirements;
(b) Ask that EPBS staff resolve with the institution a discrepancy or omission in the report or program;
(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPBS shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPBS staff for recommendation to the full EPBS.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation, the educator preparation institution shall submit information to the EPBS, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for expediting an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:
(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:
\[\text{(A)}\] A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;
\[\text{(B)}\] A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:
\[\text{(a)}\] The degree or award levels for each program;
\[\text{(b)}\] The administrative location for each program; and
\[\text{(c)}\] The structure or structures through which the unit implements its oversight of all programs;
\[\text{(3)}\] If the unit's offerings include off-campus programs, a separate chart or narrative as described above, prepared for each location at which off-campus programs are geographically located; and

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:
\[\text{(1)}\] The vision and mission of the institution and the unit;
\[\text{(2)}\] The unit's philosophy, purposes, and goals;
\[\text{(3)}\] Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;
\[\text{(4)}\] Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and
\[\text{(5)}\] A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:
\[\text{(1)}\] A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative and off-campus programs; and
\[\text{(2)}\] A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:
\[\text{(a)}\] The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and
\[\text{(b)}\] A compilation of national assessment data.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:
\[\text{(1)}\] The most recent approval letters from the EPBS and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and
\[\text{(2)}\] Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current
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declaration letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit’s conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit’s conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit’s conceptual framework for the preparation of school personnel which includes:
   (a) The mission of the institution and unit;
   (b) The unit’s philosophy, purposes, professional commitments, and dispositions;
   (c) Knowledge bases, including theories, research, the wisdom of practice, and education policy;
   (d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and
   (e) The system by which candidate performance is regularly assessed;

(2) The unit’s continuous assessment plan that provides:
   (a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit’s conceptual framework;
   (b) Each candidate’s mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;
   (c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit;
   (d) A monitoring plan for candidates from admission to exit;
   (e) Program experiences including the relationship among the program’s courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4.060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation;

(4)(a) Identification of how the program integrates the unit’s continuous assessment to assure each candidate’s mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and
   (b) Identification of how the program utilizes performance assessment to assure that each candidate’s professional growth is consistent with the New and Experienced Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each student before or at the time of admittance to the program.

Section 12. Board of Examiners. (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent groups:
   1. Teacher educators;
   2. P-12 teachers and administrators; and
   3. State and local policymaker groups; and
   (b) include at least thirty-six (36) members representing the following constituencies:
   1. Kentucky Education Association, at least ten (10) members;
   2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and
   3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:
      a. Kentucky Association of School Administrators,
      b. Persons holding positions in occupational education;
      c. Kentucky Branch National Congress of Parents and Teachers;
      d. Kentucky School Boards Association;
      e. Kentucky Association of School Councils;
      f. Kentucky Board of Education;
      g. Kentucky affiliation of a national specialty program association;
      h. Pritchard Committee for Academic Excellence;
      i. Partnership for Kentucky Schools; and
      j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an Institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be cochaired by an NCATE appointed team member and a state team chair appointed by the EPSB. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an Institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his place of employment for an accreditation visit.

Section 13. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;
(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
(3) Faculty vitae or resumes;
(4) A random sample of graduates’ transcripts;
(5) Conceptual framework documents;
(6) A curriculum program, rejoiner, or specialty group response that was submitted as a part of the program review process;
(7) Course syllabi;
(8) Policies, criteria and student records related to admission and retention;
(9) Samples of students' portfolios and other performance assessments;
(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
(11) Student evaluations, including student teaching and internships; and
(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 14. Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSSB shall conduct a previsit to the institution to make a final review of the arrangements. For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.

Section 15. On-site Accreditation Visit. (1) At least one (1) staff member of the EPSSB shall be assigned as support staff and liaison during the accreditation visit.
(2) The EPSSB shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the preparation institution.
(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.
(4) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSSB shall negotiate special arrangements.
(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:
(a) Met;
(b) Met, with one (1) or more defined areas for improvement; or
(c) Not met.
(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.
(b) The Board of Examiners shall define the areas for improvement in its report.
(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.
(8) The on-site evaluation process shall end with a brief oral report:
(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or
(b) By the state team chair for a state-only visit.

Section 16. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:
(a) The EPSSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.
(b) The first draft shall be typed and distributed to Board of Examiners members.
(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.
(d) The unit head shall submit written notification to the EPSSB confirming receipt of the draft.
(e) The unit head shall submit to the EPSSB and Board of Examiners chair within ten (10) [five (5)] working days either:
1. A written correction to the factual information contained in the report; or
2. Written notification that the unit head has reviewed the draft and found no factual errors.
(f) The Board of Examiners chair shall submit the final report to the EPSSB and a copy to each member of the Board of Examiners.
(g) The final report shall be printed by the EPSSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.
(h) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as follows:
(a) The NCATE chair shall be responsible for the preparation, editing, and corrections to the NCATE report.
(b) The state chair shall be responsible for the preparation, editing, and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.
(c) The EPSSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the Board of Examiners Report Format for State/NCATE Accreditation Visits.

Section 17. Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.
(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.
(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSSB.
(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.
(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 22 of this administrative regulation shall be followed.
(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 18. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSSB, and shall report to the full EPSSB. The EPSSB shall appoint the Accreditation Audit Committee as follows:
(a) One (1) lay member;
(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;
(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and
(d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.
(2) The chairperson of the EPSSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson.
(3) An appointment shall be for a period of four (4) years except that three (3) or the initial appointments shall be for a two (2) year term. A member may serve an additional term if nominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointments.
(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.
(5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting
an institutional self-study, the report of the evaluation team, and
the institutional response to the evaluation report. The committee
shall then prepare a recommendation for consideration by the
EPSB.
(a) The committee shall review procedures of the Board of
Examiners to determine whether approved accreditation guidelines
were followed
(b) For each institution, the committee shall make a recom-
mendation with respect to the accreditation of the institutional unit
for educator preparation as well as for approval of the individual
programs of preparation.
(c) For first accreditation, one (1) of four (4) recommendations
shall be made:
1. Accreditation;
2. Provisional accreditation;
3. Denial of accreditation; or
4. Revocation of accreditation.
(d) For regular continuing accreditation, one (1) of four (4)
recommendations shall be made:
1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.
(6) For both first and continuing accreditation, the Accredita-
tion Audit Committee shall review each program report including a
report from the Reading Committee, Board of Examiners team, and
institutional response and shall make one (1) of three (3) recom-
mendations for each individual preparation program to the EPSB:
(a) Approval;
(b) Approval with conditions; or
(c) Denial of approval.
(7) The Accreditation Audit Committee shall compile accredita-
tion data and information for each Kentucky institution that
prepares school personnel. It shall prepare for the EPSB reports and
recommendations regarding accreditation standards and procedures
as needed to improve the accreditation process and the
preparation of school personnel.

Section 19. Official State Accreditation Action by the Education
Professional Standards Board. (1) A recommendation from the
Accreditation Audit Committee shall be presented to the full EPSB.
(2) The EPSB shall consider the findings and recommenda-
tions of the Accreditation Audit Committee and make a final deter-
nement regarding the state accreditation of the educator prepara-
tion unit.
(3) Decision options following a first accreditation visit shall include:
(a) Accreditation.
1. This accreditation decision indicates that the unit meets
each of the six (6) NCATE standards for unit accreditation. Areas
for improvement may be cited, indicating problems warranting the
institution’s attention. In its subsequent annual reports, the profes-
sional education unit shall be expected to describe progress made
in addressing the areas for improvement cited in the EPSB’s action
report.
2. The next on-site visit shall be scheduled five (5) years fol-
lowing the semester of the visit;
(b) Provisional accreditation.
1. This accreditation decision indicates that the unit has not
met one (1) or more of the NCATE standards. The unit has an
accredited status but shall satisfy provisions by meeting each previ-
ously-unmet standard. EPSB shall require submission of docu-
mntation that addresses the unmet standard or standards within
six (6) months of the accreditation decision, or shall schedule a
visit focused on the unmet standard or standards within two (2)
years of the commissioner that the provisional accreditation decision
was granted. If the EPSB decides to require submission of docu-
mntation, the institution may choose to waive that option in favor
of the focused visit within two (2) years. Following the focused visit,
the EPSB shall decide to:
   a. Accredite;
   b. Revoke accreditation.
2. If the unit is accredited, the next on-site visit shall be sched-
uled for five (5) years following the semester of the first accredita-
tion visit or
   c. Denial of accreditation. This accreditation decision indicates
that the unit does not meet one (1) or more of the NCATE stan-
dards, and has pervasive problems that limit its capacity to offer
quality programs that adequately prepare candidates
(d) Revocation of accreditation. This accreditation decision
indicates that the unit has not sufficiently addressed the unmet
standard or standards following a focused visit.
(4) Decision options following a continuing accreditation visit
shall include:
(a) Accreditation.
1. This accreditation decision indicates that the unit meets
each of the six (6) NCATE standards for unit accreditation. Areas
for improvement may be cited, indicating problems warranting the
institution’s attention. In its subsequent annual reports, the profes-
sional education unit shall be expected to describe progress made
in addressing the areas for improvement cited in EPSB’s action
report.
2. The next on-site visit shall be scheduled for seven (7) years
following the semester of the visit.
(b) Accreditation with conditions.
1. This accreditation decision indicates that the unit has not
met one (1) or more of the NCATE standards. If the EPSB renders
this decision, the unit shall maintain its accredited status, but shall
satisfy conditions by meeting previously unmet standards. EPSB
shall require submission of documentation that addresses the un-
met standard or standards within six (6) months of the decision to
accredit with conditions, or shall schedule a visit focused on the
unmet standard or standards within two (2) years of the semester
that the accreditation with conditions decision was granted. If the
EPSB decides to require submission of documentation, the institu-
tion may choose to waive that option in favor of the focused visit
within two (2) years. Following the focused visit, the EPSB shall
decide to:
   a. Continue accreditation;
   b. Revoke accreditation
2. If the EPSB renders the decision to continue accreditation,
the next on-site visit shall be scheduled for seven (7) [five (5)]
years following the semester in which the continuing accreditation
visit occurred.
(c) Accreditation with probation.
1. This accreditation decision indicates that the unit has not
met one (1) or more of the NCATE standards and has pervasive
problems that limit its capacity to offer quality programs that ade-
quately prepare candidates. As a result of the continuing accredi-
tation review, the EPSB has determined that areas for improve-
ment with respect to standards may place an institution’s accredi-
tation in jeopardy if left uncorrected. The institution shall schedule
an on-site visit within two (2) years of the semester in which the
probationary decision was rendered. This visit shall mirror the pro-
cess for first accreditation. The unit as part of this visit shall ad-
dress all NCATE standards in effect at the time of the probationary
review at the two (2) year point. Following the on-site review, the
EPSB shall decide to:
   a. Continue accreditation;
   b. Revoke accreditation.
2. If accreditation is continued, the next on-site visit shall be
scheduled for five (5) years after the semester of the probationary
visit
(d) Revocation of accreditation. Following a comprehensive site
visit that occurs as a result of an EPSB decision to accredit
with probation or to accredit with conditions, this accreditation deci-
sion indicates that the unit does not meet one (1) or more of the
NCATE standards, and has pervasive problems that limit its ca-
pacity to offer quality programs that adequately prepare candi-
dates. Accreditation may also be revoked if the unit:
1. No longer meets preconditions to accreditation, such as loss
of state approval or regional accreditation;
2. Misrepresents its [it in brackets] accreditation status to the public;
3. Fails to submit annual reports or other documents required for
   accreditation purposes; or
4. Fails to submit annual reports or other documents required for
   accreditation.
(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:
(a) The institution shall inform students currently admitted to a certification or rank program of the following:
1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and
2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and
(b) An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 20. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:
(a) Approval, with the next review scheduled during the regular accreditation cycle unless a substantial revision is made;
(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the document to support:
   1. Approval; or
   2. Denial of approval; or
(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the Institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB [Accreditation-Audit Committee] as the basis for a recommendation to the full EPSB for:
   (a) Approval;
   (b) Approval with conditions; or
   (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:
(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and
(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 21. Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the Institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.

Section 22. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall submit within thirty (30) days of receipt of the EPSB official notification. An Institution shall appeal on the grounds that:
(a) A prescribed standard was disregarded;
(b) A state procedure was not followed, or
(c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 23. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(h) or (l) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedures entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028 * as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB may waive any section, or part thereof, of this administrative regulation that the EPSB determines is unduly restrictive to the development and implementation of the alternative route program.

Section 24. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB shall identify an educator preparation unit as:
(1) "At-risk of low performing" if an educator preparation program has received a:
   (a) State accreditation rating of "provisional";
   (b) State accreditation rating of "accreditation with conditions";
   or
   (c) Quality Performance Index of "At Risk of Low Performance [Performing]" established in Section 25 of this administrative regulation;

(2) "Low performing" if an educator preparation program has received a:
   (a) State accreditation rating of "accreditation with probation";
   (b) Quality Performance Index of "Low Performance [Performing]" established in Section 25 of this administrative regulation.

Section 25. The Education Professional Standards Board shall produce a state report card, which shall include:
(1) General information on the Institution and the educator preparation unit;
(2) Contact information for the person responsible for the educator preparation unit;
(3) Type or types of accreditation the unit holds;
(4) Current state accreditation status of the educator preparation unit;
(5) Year of last state accreditation visit and year of next scheduled visit;
(6) Table of the unit’s approved certification program or pro-
grams;
(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for last three (3) years;
(8) Tables relating the unit's faculty disaggregated by FTE, ethnicity, and gender for last three (3) years;
(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;
(10) Table relating pass rates on the required assessments;
(11) Table relating pass rates for Kentucky Teacher Internship Program;
(12) Table relating pass rates for Kentucky Principal Internship Program (if applicable);
(13) Table indicating student teacher satisfaction with preparation program;
(14) Table relating teacher intern satisfaction with preparation program;
(15) Table relating new teacher (<3 years) and supervisor satisfaction with preparation program;
(16) Table aggregating quality performance indicators established in this section and the standards established in Section 2 of this administrative regulation;
(17) Hyperlinks to various supporting documents; and
(18) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.
(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.
(b) The Quality Performance Index shall be a calculation of three (3) separate performance measures:
   1. Annual summary PRAXIS II pass rate;
   2. Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and
   3. Three (3) year average pass rate on the Kentucky Teacher Internship Program.
(c) Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.
   2. The sum of the product shall be divided by the sum of the performance weights.
   3. The resulting quotient produces the Quality Performance Index.
(d) The Quality Performance Index shall be divided into four (4) performance categories:
   1. A score of 4.00 or 3.50 shall indicate "Excellent Performance [Performing]*;"
   2. A score of 3.49 to 3.00 shall indicate "Satisfactory Performance [Performing]*;"
   3. A score of 2.99 to 2.75 shall indicate "At Risk of Low Performance* and shall identify the educator preparation unit as "at risk of low performance" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and
   4. A score of less than 2.75 shall indicate "Low Performance [Performing]* and shall identify the educator preparation unit as "low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.
(e) The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.

Section 26. Approval of On-Line Programs Initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

Section 27. Incorporation by Reference (1) The following material is incorporated by reference:
(a) "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education", 2002 Edition, National Council for Accreditation of Teacher Education;
(b) NCATE Unit Standards (2002 Edition), National Council for Accreditation of Teacher Education;
(c) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;
(d) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.029*, August 2002;
(e) "Education Professional Standards Board Emergency Review of Certification Programs Procedure*, September 2003; and
(f) "Quality Performance Index Calculation", 2005 edition, Education Professional Standards Board;
(g) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;
(h) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards, July 2000, and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LPC: April 13, 2005 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation will be held May 26th, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by May 19, 2006, 5 work days prior to hearing, of their intent to attend. If no notification 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. 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Brenda Dinkins Allen, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for school nurse.
(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a professional certificate for Kentucky's public school personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation delineates the requirements for the 3 levels of certification for school nurses and the renewal requirements.
(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 updates the provisions of the regulation and denominates the Education Professional Standards Board as the responsible agency and provides the detail for the requirements for each of the three school nurse certificates that are currently available.
(b) The necessity of this amendment to this regulation: The amendment updates the provisions of the regulation which was last
amended in 1980. It provides that the Education Professional Standards Board is the responsible agency and it provides a Professional and Advanced Nurse Certificates.

(c) How the amendment conforms to the content of the authorizing statute: The authorizing statutes, KRS 161.020 and 161.030, govern the certification of professional school personnel, provide that professional school personnel are required to be certified by the Education Professional Standards Board, and details the requirements for issuance and renewal.

(d) How the amendment will assist in the effective administration of the statutes: The amendment corrects the name of the responsible agency and details the requirements for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 Kentucky school districts, currently 1 school nurse preparation program, and nursing professionals seeking to become certified for employment in Kentucky's public schools.

(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 nurses will be positively impacted by the regulation. Existing provisionally certified nurses will now have an option to move to higher levels of educational rank and salary by the availability, through this regulation, of the Professional Certificate for School Nurse and the Advanced School Nurse Certificate. Nurses who do not have certification now have options for employment in the school district and increased salaries due to the recognition of advanced degrees in nursing and the advancement of educational levels and salary rank for certified nurses. 176 school districts will be positively affected by the availability of properly certified, well-educated nurses to assist in the health related matters in the schools.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.027

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

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

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

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment established - 165 [165] and
(2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses.

Section 3. The requirement to successfully complete the School Leaders Licensure Assessment shall not be required [be waivable] for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and
(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required School Leaders Licensure Assessment on a date established by theETS. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the ETS.

(2) An applicant for certification as principal shall take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Educational Professional Standards Board. Scoring and reporting of scores shall be the responsibility of the Education Professional Standards Board or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Education Professional Standards Board.

(4) An applicant shall seek Information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the ETS.

(2) For the Kentucky Specialty Test of Instructional and Administrative Practices, and applicant shall pay a fee of:

(a) Thirty (30) dollars if the test is taken before September 4, 2004, or
(b) eighty (80) dollars if the test is taken or after September 4, 2004.

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

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

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

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

Section 10. On an annual or biennial basis, the Education
Professional Standards Board shall collect and analyze data pro-
viced by the Educational Testing Service through score and insti-
tution reports which permit evaluation of the examination prereq-
uites covered by this administrative regulation.

TOM STULL, Chair
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation will be held May
26th, at 1 p.m. at the Education Professional Standards Board,
Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Ken-
tucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by May 19, 2006, five work days prior
to hearing, of their intent to attend. If no notification 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 admin-
istrative regulation. If you do not wish to be heard at the public
hearing, you may submit written comments on the proposed admin-
istrative regulation. Written comments shall be accepted until
May 31, 2006. 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: Branda Dinkins Allen, Education Profes-
sonal Standards Board, 100 Airport Road, 3rd Floor, Frankfort,
Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Branda D. Allen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes the written examination prerequisites
and the corresponding passing scores for principal certification.
(b) The necessity of this administrative regulation: KRS
161.020, 161.028, and 161.030 govern the certification of profes-
sional school personnel and grant the Education Professional
Standards Board certification authority and the responsibility for
establishing the requirements for obtaining and maintaining a cer-
tificate.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 161.020 requires a certificate of
legal qualifications for any public school position for which a certifi-
cate is issued. KRS 161.028 requires the Education Professional
Standards Board to establish standards and requirements for ob-
taining and maintaining a teaching certificate and to set the stan-
dards for and approve university programs for the preparation of
teachers and other professional school personnel. KRS 161.030
rests the responsibility of selecting assessments and determining
acceptable scores for such certification with the Education Profes-
sional Standards Board.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation delineates the examination requirements for prin-
cipal certification.
(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 modifies the passing score for the
School Leadership Licensure Assessment from 155 to 165 and
removes surplus language.
(b) The necessity of this amendment to this regulation: The
amendment adjusts the passing score keep it within the 15th to
25th national percentile range as set by the EPBS in May 1999
while ensuring that the score does not have a disparate impact
upon any class of test takers.
(c) How this amendment conforms to the content of the
authorizing statutes: The authorizing statues, KRS 161.020,
161.028, and 161.030, govern the certification of professional
school personnel and grant the Education Professional Standards
Board certification authority and the responsibility for establishing
the requirements for obtaining and maintaining a certificate. This
amendment establishes the required passing score on the School
Leaders Licensure Assessment for Kentucky Principal certification.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment updates the passing scores to
more accurately reflect an educator’s preparedness for certification
for principal.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: 176 Kentucky school districts, 28 educator prepara-
tion programs, and educators seeking principal certification.
(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 176
school districts will be positively affected by the availability of prop-
erty certified principals whose training reflects best practices in
the profession. It provides applicants with the information they will
need to prepare to pass the School Leadership Licensure Assessment prior to certi-
fication. The educator preparation programs will be affected by
properly educating their students teachers so that they will be able
to pass the required assessment(s).
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No additional agency funds allocated or necessary for
implementation of regulation. There is no additional cost to
previously certified educators, preparation programs, or school
districts.
(b) On a continuing basis: No additional agency funds allo-
cated or necessary for continuing implementation of regulation.
There is no additional cost to previously certified educators, edu-
cator preparation programs, or school districts.
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: State
General Fund.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: No additional
increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish or directly or indirectly
increase any fees.
(9) TIERING: Is tiering applied? No, tiering does not apply
since all candidates for each certificate will be held to the same
standard.

STATE BOARD OF ELECTIONS
( Amendment)

RELATES TO: KRS 39A.100, 117.045, 117.065, 117.085,
117.165, 117.187, 117.285, Chapter 424
STATUTORY AUTHORITY: KRS 39A.100(1)(k), 117.015(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(b) requires the State Board of Elections to promulgate administrative regulations establishing a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k). This administrative regulation establishes this procedure.

Section 1. Definitions. (1) *Affected county board of elections* means a county board of election that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(2) *Affected county clerk* means a county clerk in a county that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(3) *Affected election area* means an election area [district] for which a state of emergency has been declared for all or part of an election area [district] as specifically described by the Governor in an executive order issued pursuant to KRS 39A.100(1)(k).

(4) *Precinct election officer* means an individual who has been appointed to serve as an election officer in a precinct in accordance with the provisions of KRS 117.065.

(5) *Voting place* means a place for voting established in accordance with the provisions of KRS 117.065.

Section 2. General Provisions. (1) Election officials shall follow the elections emergency contingency plan as specifically mandated by the Governor through an executive order, pursuant to KRS 39A.100(1)(k), suspending or delaying an election.

(2) The procedures in the general election laws, KRS Chapters 116 to 121A, shall be applicable to an election conducted pursuant to the Elections Emergency Contingency Plan [elections emergency contingency plan], unless superseded by:

(a) The Governor's executive order, pursuant to KRS 39A.100(1)(k); or

(b) Provisions of this administrative regulation.

(3) County boards of elections shall establish procedures to implement the provisions of this administrative regulation at the local level and shall file the "County Board of Elections Notice of Establishment of Local Elections Emergency Contingency Plan Procedures" Form SBE 20 on or before the first day of March of each year in which a general election occurs.

(4) County boards of elections shall train all precinct election officers prior to each primary and general election on the procedures established by the county boards of elections to implement the Elections Emergency Contingency Plan [elections emergency contingency plan] during the training required by KRS 117.187.

Section 3. Notification. After the Governor has issued an executive order pursuant to KRS 39A.100(1)(k), the State Board of Elections shall notify all county clerks in the affected election area [district] or statewide, in accordance with the Governor's executive order.

Section 4. Voting Places. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall:

(1) Identify the number of voting places that are functional, that can be repaired, and that have been destroyed, and

(2) Establish new voting places, if needed, in a manner consistent with KRS 117.065.

Section 5. Precinct Election Officers. If an affected county board of elections determines that new precinct election officers are required because of an emergency, the affected county board of elections shall use the same list of precinct election officers from the suspended election and may create a new list of additional precinct election officers in a manner consistent with the provisions of KRS 117.045.

Section 6. Procedures for Conducting an Election Rescheduled Prior to the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election, prior to the original date scheduled for an election by law, the affected county clerk shall ensure that the public receives prompt notification of the suspension or delay of an election in accordance with KRS Chapter 424, if possible, and any other means available.

(2) Absentee voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately:

(a) suspend absentee voting being conducted pursuant to KRS 117.085(1)(c); and

(b) secure all voting machines being used for absentee voting until absentee voting may be resumed in accordance with KRS 117.085(1)(c).

(3) Absentee ballots. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all unvoted absentee ballots and related materials in a secured and locked storage container or area until absentee voting may be resumed in accordance with KRS 117.085(1)(c).

(4) Examination of voting equipment.

(a) The date of examination of voting equipment, conducted pursuant to KRS 117.165, which has been previously noticed, but is affected by the suspension or delay of an election, shall be re-noticed pursuant to KRS Chapter 424, if possible, and any other means available.

(b) The affected county board of elections shall not conduct a reexamination of the voting equipment if the affected county board of elections has already conducted the examination required by KRS 117.165 prior to receipt of the notice of the rescheduled election.

Section 7. Procedures for Conducting an Election Rescheduled After the Commencement of the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election after the commencement of an election, the affected county clerk shall ensure that the public receives immediate notification of the suspension of the election and the date of the rescheduled election by any means possible, including all electronic media available and notice in accordance with KRS Chapter 424.

(2) General voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall immediately:

(a) suspend general voting being conducted on all voting systems;

(b) instruct the precinct election officers to secure all voting machines being used for general voting until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k);

(c) instruct the precinct election officers to not closeout or tally the votes in the voting machines. The precinct election officers shall ensure that all seals on the voting machines are intact prior to storage in a secure location;

(d) instruct the precinct election officers to record the public counter number on the form furnished by the county board of elections and the form shall be signed by all present precinct election officers; and

(e) instruct the precinct election officers to return all election materials to the county board of elections.

(3) Ballots and election materials. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all election materials, including unvoted absentee ballots, provisional ballots, and related materials, in a secured and locked storage container or area until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k).

(4) Conduct of rescheduled election.

(a) If the precinct signature roster and voting machines are intact from the original election date, then only those persons duly registered to vote upon the original election date who did not vote on that date shall be entitled to vote on the additional day of voting in that precinct.

(b) If the precinct signature rosters or the voting machines are not intact from the original election date;
May 23, 2006, at 10 a.m. local time at the State Board of elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation fulfills the mandate of KRS 117.015(1)(b) that requires the State Board of Elections to establish a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 117.015(1)(b) and 39A.100(1)(k).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(b) requires the State Board of Elections to establish a procedure for election officials to follow if an election has been suspended or delayed. This administrative regulation establishes an Elections Emergency Contingency Plan for local election officials to follow if the Governor issues an executive order pursuant to KRS 39A.100(1)(k) rescheduling an election.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation helps ensure that all election officials comply with the procedures for rescheduling an election.

2. If the signature rosters are destroyed or incomplete and the voting machines are intact, the county board of elections shall use a new set of precinct signature rosters provided by the State Board of Elections, clear the voting machines of all votes, and reset the machines for use in the rescheduled election, and

3. If the voting machines are not intact, the county board of elections shall repair, replace, or acquire new voting machines.

(c) Voting on the rescheduled election day shall be accomplished by physically appearing at the voting location. The time set by law for casting or canvassing a military, absentee, or special presidential ballots shall not be extended by the executive order rescheduling the election. Any absentee, military, or special presidential ballot duly received on the original election date shall be valid.

Section 8. Release and Certification of Election Returns (1) If a statewide election is affected by the suspension or delay of an election in an affected election area [district] pursuant to KRS 39A.100(1)(k):

(a) County boards of elections not located in the affected election area [district] that have races affected by the suspension or delay of an election in an affected election area [district] shall

1. Withhold returns for affected races until the county boards of elections in those counties where an election has been suspended or delayed have conducted rescheduled elections and are able to certify returns to the Secretary of State;

2. Not release any vote totals for the affected races until the suspended election has been completed in the affected counties;

3. Instruct the precinct election officers to not closeout or tally the votes in the voting machines;

4. Instruct the precinct election officers to remove the memory device that stores the vote totals on each voting machine, to secure and seal each voting machine, and to post the vote totals of the affected races at the precinct as required by KRS 117.265. The precinct election officers shall immediately return all election materials to the county board of elections; and

5. Tally the vote totals from each precinct and only post at the county clerk's office the vote totals for those races not affected by the suspension or delay pursuant to KRS 39A.100(1)(k).

(b) The State Board of Elections shall notify the county boards of elections not located in the affected election area [district] that have races affected by the suspension or delay of an election in an affected election area [district] when vote totals are to be delayed and when vote totals shall be certified to the Secretary of State.

(2) If a county election, or any part of a county election, is suspended, the vote totals from an affected race shall not be released by the affected county board of elections until after the polls have closed in those precincts [jurisdictions] with delayed elections.

Section 9. Post-Election Deadlines. All post-election time frames and deadlines not specifically addressed in the provisions of this administrative regulation that are enumerated in general election laws shall be suspended until the rescheduled election occurs, in accordance with the Governor's executive order, pursuant to KRS 39A.100(1)(k).


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

TREY GRAYSON, Chair
APPROVED BY AGENCY: March 21, 2006
FILED WITH LRC: April 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)

103 KAR 16:150. Apportionment and allocation; financial organizations and loan companies.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120 [Chapter 141A]
NECESSITY, [AND] FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation interprets the statute as it applies to the apportionment and allocation of interstate financial organizations and loan companies.

Section 1. General. For financial organizations and loan companies [if the primary business of the corporation is making loans], the business income earned within Kentucky shall be determined by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor (twenty-five (25) percent), and the denominator of which is four (4).

Section 2. Sales Factor. The sales factor is a fraction, the numerator of which is all receipts derived from loans or other services negotiated through offices located in Kentucky, and the denominator of which is total business receipts.

Section 3. Outstanding Loan Balance Factor. The outstanding loan balance factor is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices in Kentucky. The denominator is the average loan balance of all outstanding loans. The average outstanding loan balance is determined as the beginning and ending balance in an equitable factor, the average outstanding loan balance is computed on a monthly average basis.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(8)(b).

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amended administrative regulation shall be held on May 24, 2006 at 1 p.m. in Room 586 Capitol Annex, Frankfort, Kentucky 40601. Any person interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3834.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

1. Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax
purposes. This regulation interprets the statute as it applies to the apportionment and allocation of interstate financial organizations and loan companies.

(b) The necessity of this administrative regulation: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration of all tax statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation gives guidance, in a specific type of situation, concerning how to apportion income.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation tells interstate financial institutions and loan companies how to apportion income.

(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 adds "financial institutions" to the regulation language.

(b) The necessity of the amendment to this administrative regulation: Apportionment in Kentucky was changed under HB 272 2005.

(c) How the amendment conforms to the content of the authorizing statutes: It adds financial institutions to the statute which already covered "loan companies." Both entities are already treated similarly under current law.

(d) How the amendment will assist in the effective administration of the statutes: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision applies to loan companies and financial institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: These entities are being given guidance on how to apportion income.

(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: Agency funds.

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

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

(9) TIERSING: Is tiering applied? Tiering was not used, because this administrative regulation relates to a tax statute which must be administered uniformly under the Kentucky Constitution.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(Amendment)

103 KAR 17:060. Income subject to taxation; portions.

RELATES TO: KRS 141.010, 141.020

STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 131A]

NECESSITY, [AND] FUNCTION, AND CONFORMITY: This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.

Section 1. Residents. The entire net income of a full-year resi-
dent individual is subject to Kentucky income tax regardless of its source. Income from out-of-state sources is not exempt. The adjust-
ments to gross income and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident are not limited to those paid in Kentucky.

Section 2. Persons Becoming Residents During the Year. (1) Persons who become Kentucky residents during the year are subject to Kentucky individual income tax upon their entire net in-
comes [income] from any source after becoming [a] Kentucky resi-
dents [residents] and upon their incomes [income] from Kentucky sources prior to becoming [a] Kentucky resident [resident].

(2) Except as provided in Section 6 of this administrative regu-
lation for net operating loss deductions, persons [taxpayers] who become residents during the year are limited to either:

(a) Adjustments to gross income and itemized deductions al-
lowed pursuant to KRS 141.010(10) and (11) paid after becoming [a] Kentucky resident [resident]; or

(b) That portion of total adjustments to gross income and item-
ized deductions that Kentucky income bears to total income.

Section 3. Persons Becoming Nonresidents During the Year. (1) Persons who are Kentucky residents, but become nonresidents during the year, are subject to Kentucky individual income tax upon their entire net incomes [income] from all sources while they are [a] Kentucky residents [resident] and upon their incomes [income] from Kentucky sources after becoming nonresidents [nonresident].

(2) Except as provided in Section 6 of this administrative regu-
lation for net operating loss deductions, persons who become non-
residents during the year are generally limited to that portion of total adjustments to gross income and total itemized deductions allowed pursuant to KRS 141.010(10) and (11) that Kentucky income bears to total income.

Section 4. Nonresidents. Any net income of a nonresident is subject to Kentucky income tax if it is derived from services performed in Kentucky or from property located in Kentucky. Income from sources outside Kentucky is not subject to Kentucky income tax, nor are losses incurred outside Kentucky deductible in computing Kentucky adjusted gross income. Except as provided in Section 5 of this administrative regulation for net operating loss deductions, the adjustments to gross income and [the] itemized deductions allowed pursuant to KRS 141.010(10) and (11) are limited to that portion of adjustments to gross income and total itemized deductions that Kentucky income bears to total income.

Section 5. Allocation Based Upon Kentucky Income. If a de-
duction or an adjustment to gross income is allowable based upon the receipt of certain types of income and is limited to a maximum amount deductible for federal income tax purposes, the Kentucky income used to make the allocation shall be the same type of income used to allow the deduction on the federal return.

Section 6. Net Operating Loss Deduction. An individual resi-
dent, a part-year individual resident, or an individual nonresident shall compute the net operating loss deduction using Kentucky income and expenses allowed or allowable on the Kentucky return.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on May 24, 2006 at 10 a.m. in Room 388 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) work-
days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed ad-
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ADMINISTRATIVE REGULATION. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.
(b) The necessity of this administrative regulation: This administrative regulation explains income deduction distinctions among residents, nonresidents, and part-year residents.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By describing each category of residency, this administrative regulation helps taxpayers determine the Kentucky portions of their incomes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation enacts into regulation various revenue policies that were rendered void with the adoption of KRS Chapter 13A. The changes also amend the language of an administrative regulation on the same topic to allow adjustments to gross income under KRS 141.010(10) and (11) due to tax modernization.
(b) The necessity of the amendment to this administrative regulation: The necessity is partially caused by a change in the tax statutes and partially from the desire to provide guidance on the issues of the void policies.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.
(d) How the amendment will assist in the effective administration of the statutes: It provides guidance to taxpayers on filing issues.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentucky individual income tax payers.
(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. They are being provided with guidance as to what deductions are applicable based on residency status.
(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: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was used to the extent that the regulation sets out the statutorily distinct treatment given residents, nonresidents, and part-year residents.

GENERAL GOVERNMENT CABINET
State Board of Accountancy (Amendment)

201 KAR 1:015. Meetings.

RELATES TO: 2006 Ky. Acts ch. 59, KRS 325.230, 325.240
STATUTORY AUTHORITY: KRS 325.240
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation governs the meetings of the board and the per diem amount to be received by board members.

Section 1. The board shall meet in Louisville, or elsewhere in Kentucky as it may elect, at least once each year.

Section 2. The board shall schedule the time and place of future meetings by resolution.

Section 3. Each member of the board shall receive $150 for each day spent in the discharge of his or her official duties.
(1) A special meeting may be called by the board president or by a majority of the members of the board.
(2) Two (2) written notice shall be given for special meetings.
(3) The notice shall designate the time and place of the special meeting.

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.

SHARON WALTERS, CPA, President
APPROVED BY AGENCY, April 14, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 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 May 15, 2006, five working 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 shall 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 May 31, 2006. 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) 595-3007, 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 establishes the meeting location and minimum number of meetings the board shall hold each year.
(b) The necessity of this administrative regulation: To establish procedures associated with board meetings.
(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 the existing administrative regulation; it will add a section that establishes the per diem amount the board members are to receive in the discharge of their official duties.
(b) The necessity of the amendment to this administrative regulation: To comply with 2006 Ky. Acts ch. 95 which requires the board to establish their per diem via administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: 2008 Ky. Acts ch. 95 authorizes the board to establish a per diem that does not exceed $200. The rate of the per diem in the amendment is $150.
(d) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the 7 board members will be affected.
(e) 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 members will receive an increase from their current per diem.
(f) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: $3800 per year.
   (b) On a continuing basis: $3800 per year.
(g) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board of Accountancy’s Trust and Agency fund.
(h) Provide an assessment of whether an 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 new fees will be required.
(i) 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.
(j) TIERRING: was tiering applied? Tiering was not used since the changes apply to all board members.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:050. License application.


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 in KRS 325.261 shall submit the "Application for Initial License as a Kentucky Certified Public Accountant".

(2) With his or her application, the person shall include:
(a) A check or money order, which is nonrefundable, made payable to the "Kentucky State Board of Accountancy" for $100;
(b) The certificate of experience as described in 201 KAR 1:053;
(c) Ous (1) photograph taken within ninety (90) days preceding the application, the back of which shall contain the signature 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, unless it is already in possession of the board; and
(e) An official transcript as described in 201 KAR 1:190 from an accredited college or university as described in 201 KAR 1:190 which verifies the candidate has satisfied the 150-hour requirement of KRS 325.261.

(1) Proof of successful completion of the Uniform Certified Public Accountants Examination. If the applicant successfully completed the examination in Kentucky, no document is required. If the examination was successfully completed in another jurisdiction, the applicant shall have an "Authorization for Interstate Exchange of Information" submitted to the board on his or her behalf; and

(2) If required by 2006 Ky. Acts ch. 33:
1. Documentation from the United States Citizenship and Immigration Services, or its successor, to verify the person is legally residing in the United States; or
2. Documentation from the employer that verifies the person is an employee of a public accounting firm, company, or institution of postsecondary education located outside the United States, but also has an office or campus located in the United States.

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 required by Section 1 (2) of this administrative regulation, except for an official transcript; and
(c) An "Authorization for Interstate Exchange of Information", form completed by the licensing jurisdiction where the applicant holds a valid and active license and certified copies of experience requirement documents from his or her license file; or

(2) If the applicant cannot provide the certificate of experience as required in Section 1 of this administrative regulation; and:
(a) Is applying under the provisions of KRS 325.280(1)(c), the applicant 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), he or she shall submit or cause to have submitted one (1) of the following documents which clearly reflects that the applicant 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 has knowledge of the applicant's practice;
   3. Copies of firm license applications; or

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Initial License as a Kentucky Certified Public Accountant (2006) [2006];"
(b) "Application for Licenses as a Kentucky Certified Public Accountant by Reciprocity (2005);" and
(c) "Authorization for Interstate Exchange of Information, (2006)."
(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.

SHARON WALTERS, CPA, President
APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 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 the agency in writing by May 15, 2006, 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 hear-
ing will not be made unless a written request for an 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 May 31, 2006. 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 steps necessary to follow in order 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.
(2) 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.
(3) If 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 incorporates changes made to KRS 325.261 by the 2006 GA regarding the licensing of foreign applicants for a license to practice as a CPA.
(b) The necessity of the amendment to this administrative regulation: The changes made to the licensing statute, KRS 325.261, by the 2006 GA necessitated this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment describes procedures foreign candidates are to follow to receive a license.
(d) How the amendment will assist in the effective administration of the statute: The amendment describes the procedures candidates for a license from a foreign country must follow to receive a license.
(4) The 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 whether they are located in the United States or in a foreign country. The number of people possibly affected is unknown.
(5) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be no change to applicants for the license who are US citizens, foreign nationals legally residing in the United States, or employed by a public accounting firm, company, or university located in a foreign country which also has an office or campus located in the U.S. Those who are unable to meet these requirements will not receive a license to practice since they have no connection to practicing public accounting in Kentucky which is all the license allows them to do.
(6) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(7) 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.
(8) Provide an assessment of whether an 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.
(9) 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.
(10) TIERING: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as CPAs.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:190. Computer-based examination sections, applications, and procedures.

RELATES TO: 2006 Ky. Acts ch. 33, KRS [325.264(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. 2006 Ky. Acts ch. 33 [KRS 325.261(6)] 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 a substantially equivalent word (same 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 examinee 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 fifty-nine (59) 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, degree 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 60/100ths of a semester hour.
(10) "Testing window" means the two (2) months out of each three (3) month period during a calendar year when an examinee 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. Examination Sections. The board has adopted the computer-based certified public accountants examination prepared by the AICPA as the examination every candidate seeking to re-
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. 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 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.

(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 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 of the month 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.

(d) 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. 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, pleaded 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; or
   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 examination 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 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
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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 the 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. (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 of 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 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 9 of this administrative regulation.

(5) 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. 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 current 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.

(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. 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) Siting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. 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 reexamination candidate, the individual shall return the reexamination application to the board. The reexamination application shall contain the following information:

1. The applicant's name, 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 5 of this administrative regulation shall be applicable to a reexamination application.

(8) The reexamination candidate shall comply with the requirements of Sections 6, 7, and 8 of this administrative regulation.
Section 10. 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. [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 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 the administrative regulation.

Section 12] Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Application for the Certified Public Accountant Examination", 2006 [2006, Kentucky State Board of Accountancy.
   (b) "Reexamination Application for the Certified Public Accountant Examination", 2006 [2006], Kentucky State Board of Accountancy;
   (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, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SHARON WALTERS, CPA, President
APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 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 May 15, 2006, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend is received by May 15, 2006, 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 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 May 31, 2006. 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) 555-3097, fax (502) 555-4281.

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 examination who are not currently eligible, the procedures associated with this process.
   (c) How this administrative regulation conforms to the content of the enabling statute: The statute authorizes 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 examination 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 incorporates changes made to the examination requirements for the Kentucky CPA exam by the following acts:
   (b) The necessity of the amendment to this administrative regulation: This rule was reviewed by the state board for changes required by the following acts:

(c) How the amendment conforms to the content of the enabling statute:
(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Persons interested in applying to sit for the CPA exam. 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 increase the number of candidates eligible to sit for the exam.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None

What is the source of the funding to be used for the implementation of this administrative regulation: Funds for enforcement are the Board of Accountancy's Trust and Agency fund.

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

7) STATEMENT: Is tiering applied? Tiering was not used since it applies equally to all individuals seeking to become licensed as a CPA.

GENERAL GOVERNMENT CABINET
State Board of Hairdressers and Cosmetologists (Amendment)

201 KAR 12:020. Examination.

STATUTORY AUTHORITY: KRS 317A.060, 317A.060
317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations regarding examinations of applicants for licenses in cosmetology, nail technology, and esthetics. This administrative regulation establishes the procedures and qualifications for these examinations.

Section 1. (1) A graduate of any school of cosmetology licensed by this board shall not be accepted for examination who has not registered with the board at least ten (10) months and two (2) weeks prior to said examination.

(2) A graduate nail technician shall not be accepted for examination who has not registered with the board at least seventy-five
(75) days prior to examination.
(3) A graduate esthetician shall not be accepted for examination who has not registered with the board at least six (6) months and two (2) weeks prior to examination.

Section 2. An applicant for licensure who completed hours in another state shall submit a certification from the state board of the state in which the hours were obtained.

Section 3.A. student, apprentice cosmetologist, nail technician, or esthetician shall not be permitted to take the board’s examination whose application completed in full has not reached the office of the board at least ten (10) working days prior to the beginning date of examination.

Section 4. (1). The board’s examination shall be given only to an applicant who has been notified to appear for the examination and who is wearing a clean, washable uniform, and who has with him or her instruments and all supplies needed to be used in the giving of practical examination.
(2) A uniform shall be considered a lab jacket or smock over clothing.
(3) Bibs or aprons shall not be allowed.

Section 5. The examination shall consist of both a written test and practical demonstration in subjects from the curriculum as specified. The practical demonstration shall be performed on a mannequin head and hand for the cosmetology practical examination, mannequin head for the esthetician practical examination and a mannequin hand for the nail technician practical examination [live female模特] provided by the applicant.

Section 6. (1) An average grade of seventy (70) percent in theory and practical shall be required as a passing grade on the board’s apprentice cosmetologist nail technician and esthetician examination. A failing grade shall not be issued to an applicant, not including instructors, with a grade below seventy (70) percent in any one subject. An applicant shall submit to reexamination on subjects not successfully completed.
(2) An Instructor’s license shall not be issued to any applicant receiving a grade below eighty (80) percent on written and eighty-five (85) percent on practical. An applicant shall submit to reexamination on subjects not successfully completed.

Section 7. A student who practices cosmetology, nail technology or esthetics in a beauty salon prior to the examination given by the board may be considered ineligible to take the examination pending hearing before the board.

Section 8. A bulletin board shall be provided by a school and the examination schedule shall be conspicuously displayed thereon at all times.

Section 9. An applicant successfully completing the state board examinations shall buy his or her license within thirty (30) days following the examination. Failure to purchase the license shall require the paying of the appropriate restoration fee as required by 201 KAR 12:220 [KRS §17A-860(4)] and appropriate restoration fee as required by 201 KAR 12:220(4) for an esthetics license.

Section 10. The fee accompanying an application shall not be refunded unless the application is rejected by the board.

Section 11. Any applicant who fails the state board examination may be rescheduled for examination during any examination period provided all qualifications are met.

Section 12. Any applicant that fails to report for examination on the date in which the applicant was notified shall submit an examination application and pay the examination fee as required by 201 KAR 12:220 prior to being rescheduled for examination. Any waiver of the examination fee to be granted at the discretion of the board with good cause shown.

REGINA WEBB, Chairman
APPROVED BY AGENCY: March 14, 2006
FILED WITH LRC: April 13, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 at 10:00 a.m. at the offices of the board, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2006, five working days prior to the hearing of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 May 31, 2006. 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: Wilma May, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TEARING STATEMENT

Contact Person: Wilma May, Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the requirements for examination for apprentice cosmetologists, regular cosmetologists, nail technicians and estheticians.
(b) The necessity of this administrative regulation: To assure that all students are properly enrolled and completed the statutory hourly requirement prior to submitting to examination.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish the requirements for licensure to assure proper education and training of all students.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements that students must meet prior to the board prior to examination and the requirements for examination.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Changes the requirement that the practical examination be administered using a mannequin instead of a live female model.
(b) The necessity of the amendment to this administrative regulation: By using mannequins for the practical examination, the board could examine more applicants and would reduce number of persons who cancel the examination due to inability to obtain a live model.
(c) How the amendment conforms to the content of the authorizing statutes: The board is given the authority to establish the requirements for licensure by examination.
(d) How the amendment will assist in the effective administration of the statutes: The examination process should run more efficiently and effectively by using mannequins on the practical examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,850 applicants per year reporting for a practical examination.
(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 would be a fiscal impact as each applicant would be required to purchase a mannequin for the examination. However, the board feels the cost would be offset by not having to bring a live model.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Initially there may be a minimal cost to the agency
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in remodeling the practical examination room.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operation is funded by enrollment, examination and license fees paid by licensees and applicants.

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

(9) TIERING: Is tiering applied? Tieng was not used as all applicants would be required to use a mannequin for the examination and therefore, all requirements for examination would be consistent to all applicants.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny, limit, revoke, suspend, suspend or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

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

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

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

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

(c) For registration or reinstatement as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner"; or

(d) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application";

(e) For renewal as an RN and an ARNP, "Annual Licensure Renewal Application for RN and ARNP";

(f) For licensure as an RN and registration as an ARNP, "Application for RN Licensure and ARNP Registration"; or

(g) For retired licensure status, "Application for Retired Status".

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

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

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

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

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

(7) Submit additional information as required by the board in an administrative regulation;

(8) Meet the additional requirements for:

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

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

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

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

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

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:058;

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

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

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

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

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

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

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

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

(a) "Application for Licensure", 2/2006 [6/2005], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 2/2006 [6/2004], Kentucky Board of Nursing;

(c) "Application for Registration as an Advanced Registered Nurse Practitioner", 2/2005 [6/2002], Kentucky Board of Nursing;

(d) "ARNP Registration Renewal Application", 8/2005, Kentucky Board of Nursing; and

(e) "Annual Licensure Renewal Application: RN and ARNP", 2/2006, Kentucky Board of Nursing;

(f) "Application for RN Licensure and ARNP Registration", 2/2006, Kentucky Board of Nursing; and

(g) "Application for Retired Status", 8/2004, Kentucky Board of Nursing.

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

JIMMY T. ISENBERT, President
APPROVED BY AGENCY: February 24, 2006
FILED WITH LRC: April 10, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 at 9 a.m. ET in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2006, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be
made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email: nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:
(a) What this administrative regulation does: It establishes requirements for licensure and registration for nurses.
(b) The necessity of this administrative regulation: The board is required by statute to establish these requirements.
(c) How this administrative regulation conforms to the content of the authorizing statute: By establishing these requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing these requirements.
(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: It incorporates changes to several application forms.
(b) The necessity of the amendment to the administrative regulation: To assist in the effective administration of the statutes.
(c) How the amendment conforms to the content of the authorizing statute: By making the changes to the application forms.
(d) How the amendment will assist in the effective administration of the statutes: By making the changes to the application forms.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure or registration, number 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: The applications will be updated.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied, as the changes apply to all equally.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(2), 327.040(10), 327.070
STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means:
(a) The number of hours spent participating in an activity; or
(b) Twelve (12) hours per semester credit hours; or
(c) Eight (8) hours per quarter credit hours for completion or auditing of an accredited post secondary educational institution credit course.
(2) "Continued competency" means a planned learning experience that occurs beyond the entry level educational requirements for credential holders. Content of the experience shall relate to the scope of physical therapy practice in KRS 327.010(1), whether the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.
(3) "Continued competency hour" means the hours awarded from activities or events described in Category 1 and 2.
(4) "Continuing education unit (CEU) granting agency" means an organization with a formal process to review course structure and objectives in order to approve the educational offering. This shall include all agencies recognized by Kentucky Physical Therapy Association (KPTA), American Physical Therapy Association (APTA) and its components, and any state licensing board.
(5) "Practice in the field of physical therapy" means direct patient care, management of patient care, or teaching in a physical therapy educational program.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period.
(a) For a physical therapist, the board shall require thirty (30) continued competency hours as a condition of licensure renewal. These hours shall be obtained as follows:
1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;
2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2); and
3. No more than ten (10) hours may be earned from Category 2 described in subsection (3).
(b) For a Physical Therapist Assistant, the board shall require twenty (20) continued competency hours as a condition of renewal. These hours shall be obtained as follows:
1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;
2. At least ten (10) hours shall be earned from Category 1 described in subsection (2); and
3. No more than eight (8) hours may be earned from Category 2 described in subsection (3).
(2) Category 1 continued competency shall be any of the following:
(a) Completion of courses, seminars, workshops, symposia and home study courses of at least thirty (30) contact hours that have been approved by KSPPT or its designated [appropiate-CEU granting agencies]. Continued competency hours shall be awarded by contact hours;
(b) Completion or auditing of an accredited postsecondary educational institution credit course;
(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by KSPPT or its designated [appropriate CEU granting agencies], which shall be awarded by contact hours;
(d) Authorship of a presented scientific paper, scientific platform presentation or published article undergoing peer review, but not more than ten (10) hours per event with a maximum of two (2) events per biennium;
(e) Teaching a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder, but not more than twenty (20) hours per biennium;
(f) Certification or recertification of clinical specialization within the scope of physical therapy practice, but not more than twenty-

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eight (28) continued competency hours per biennium;

(9) Completion of a clinical residency program, but not more than five (5) continued competency hours for each week of residency with a maximum of twenty-eight (28) continued competency hours per program per biennium;

(h) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1000 hours per biennium. Five (5) continued competency hours shall be awarded per biennium;

(i) Appointment to the Kentucky Board of Physical Therapy. Four (4) continued competency hours shall be awarded per biennium;

(j) Election or appointment to a position of the KPTA, APTA or Federation of State Boards of Physical Therapy (FSBPT) as an officer or committee chair. Four (4) continued competency hours shall be awarded per biennium; and

(k) Member of a committee or task forces for one (1) of the organizations in Section 2(2) paragraph (l) or (j) of this administrative regulation. One (1) continued competency hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) continued competency hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel or symposium. One (1) continued competency hour for each hour of activity. A maximum of two (2) hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE approved educational program. Continued competency shall be one (1) hour per sixteen (16) student contact hours;

(d) Participation in a physical therapy inservice or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) continued competency hours shall be awarded per biennium;

(e) Participation in community service related to health care. Continued competency shall be awarded for two (2) hours per biennium;

(f) Member of the APTA. Continued competency hours shall be one (1) hour per year and a maximum of two (2) credit hours per biennium;

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities satisfactory to the board; and

(c) Any licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities may be subject to disciplinary action pursuant to KRS 327.070.

REBECCA E. KLUSCH, Executive Director
APPROVED BY AGENCY: March 31, 2006
FILED WITH LRC: April 4, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 at 9 a.m. ET at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing 5 days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assists in assuring safe and effective practices for the safety and welfare of the public.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for occupational holders.

(2) If 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 clarifies when the continued competency needs to be completed.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the process of continued competency.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 3,700.

(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The credential holders will be required to show competency during the biennial renewal period and needed clarification.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

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

(8) Tiering: Is tiering applied? Tiering was not used, because the administrative regulation applies equally to all those individuals regulated by it.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

NEEDEDNESS, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated
physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed for initial licensure if the applicant:

(1) Furnishes the board a [an] original favorable educational credential [credentials] evaluation report from a credentialing agency who uses the "Coursework Evaluation Tool" copyrighted by Federation of State Boards of Physical Therapy (FSBPT); or

(2) Has graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned a degree substantially equivalent to a program in physical therapy accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

(3) Shows proof of English language proficiency;

(a) A score of not less than fifty (50) on the Test of Spoken English (TSE);

(b) Verification that the applicant has achieved the following minimum scores for each section of the new Internet-based TOEFL 61 examination: writing, twenty-four (24); speaking, twenty-six (26); reading, eighteen (18); listening, twenty-one (21); with an overall score of not less than eighty-nine (89); or

(c) Verification that English is the native language of the country of origin. [ Speaks English as his or her native language or has submitted the results of the Test of Spoken English (TSE) with a total score of at least fifty (50).

(4) Provides proof that he or she has obtained legal authorization to reside and work without limitations in any US Jurisdiction. If required to undergo prescreening for immigration purposes, the board shall approve the use of the Foreign Credentialing Commission on Physical Therapy (FCCPT) or other agencies approved by US Immigration and Naturalization Service to provide this service;

(5) Comply with KRS 237.005(1)(a) and (b);

(6) Submits a satisfactorily-completed application and appropriate fee as required by [201-KAR 22:04 and] 201 KAR 22:135;

(7) Has successfully completed:

(a) Not less than three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as a clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days; or

(b) Three (3) months of not less than 390 hours of supervised practice in a state with credentialing requirements at least comparable to those of Kentucky. Evidence of that experience in a comparable facility outside Kentucky shall be in writing confirming successful completion and satisfactory performance; and

(8) Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 237.690.

Section 2. A foreign-educated physical therapist applicant by endorsement shall be credentialed for licensure if the applicant:

(1) Completes the requirements of 201 KAR 22:020, Section 2(3), (4), and (5); or

(2) Completes the requirements of 201 KAR 22:020, Section 4(2) and (3);

(3) Furnishes the board a favorable educational credential evaluation report and

(4) Furnishes verification of active practice with a current unrestricted license for at least five (5) years prior to applying for licensure in Kentucky;

(5) If subsection (4) of this section is not applicable, the requirements of KRS 237.060(1)(6) shall be required.

Section 3. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant for credentialing by examination, or an applicant who has not yet satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(7) of this administrative regulation [practice under the supervision of a designated Kentucky credentialed therapist] if he or she has:

(a) Completed the requirements of Section 1(1) to (6) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant:

(a) Fails to obtain a passing score on the examination;

(b) Fails to complete the scheduled examination within the initial sixty (60) day eligibility; or

(c) Has not satisfactorily completed the supervised practice within six (6) months.

(3) A supervisory agreement for credentialing shall be completed within six (6) months from the beginning of the supervised practice if not completed within that time period, the temporary permit shall be revoked and the applicant shall no longer work in Kentucky as a physical therapist.

Section 4. [3] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing 9/2/04; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country 10/12/00."

(2) This material may be inspected, copied or obtained, subject to applicable copyright laws, at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA E. KLUSCH, Executive Director
APPROVED BY AGENCY: March 31, 2006
FILED WITH LRC: April 4, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006 at 9 a.m. ET at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing 5 days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502)429-7140, fax (502)429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provides a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for foreign-educated physical therapists.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040(1), (11), and 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the specifics for foreign-educated licensing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the specifics for foreign-educated licensing requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify the licensing approval process.

(b) The necessity of the amendment to this administrative regulation: To clarify requirement for licensees of foreign education physical therapists for public protection.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a foreign-educated physical therapist to become licensed in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 25 a year.

(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 licensing requirements will ensure that the applicants possess adequate educational and clinical preparation for licensure.

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

(a) Initially: There will be no additional costs to the agency in implementing this administrative regulation.

(b) On a continuing basis: None.

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Podiatry
(Amendment)


RELATES TO: KRS 311.450(2)
STATUTORY AUTHORITY: KRS 311.410(4), 311.450(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) (fifteen (15) hours of continuing education relating to the practice of podiatry. (2) The twenty (20) (fifteen (15) hours required pursuant to subsection (1) of this section shall include:

(a) Up to twenty (20), but not fewer than fifteen (15) hours, in courses that meet the criteria of Category A outlined in Section 2 of this administrative regulation, and

Not more than five (5) hours in courses that meet the criteria of Category B outlined in Section 2 of this administrative regulation (be taken from these programs approved or sponsored by the board).

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4) All Category A continuing education credits must be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) except when the course provider or the licensee that intends to take a course has made written application to the board for approval of the course prior to the presentation of the course under Section 6 of this administrative regulation, and the board has approved the course.

Section 2. Minimum Continuing Education Requirements. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall be earned by attendance at:

(a) A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

(b) An accredited school of podiatry continuing education program;

(c) Another program approved by the board under Section 6 of this administrative regulation.

(2) A Category B continuing education hour shall relate to non-podiatric medical issues or general practice issues and shall be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures;

(c) Local or regional medical society or medical association meetings. [Prior approval shall be secured from the board for certification of a continuing education program, other than a program required by Section 3(4) of this administrative regulation.]

(3) A sponsor shall submit a written letter of application to the board to request approval of a continuing education program. The written letter shall indicate that the program has been approved, or is under consideration for approval, by the American Podiatric Medical Association/Council on Podiatric Medical Education.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the required proof of continuing education to the board within fifteen (15) days of the request.

(d) It is the responsibility of the licensee to show proof of APMA/CPME certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(4) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:

(a) Complies with the requirements of KRS 214.610(1); and

(b) Is approved by: 1. The Kentucky Cabinet for Health Services pursuant to 902 KAR 2:160 as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome; or

2. The board.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension
of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;
(b) Illness of the licensee or an immediate family member; or
(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:
(a) Submitted by the person holding the license; and
(b) Accompanied by a document verifying the illness or disability signed by the:
1. Licensee’s personal physician; or
2. Immediate family member’s personal physician.

(3) A waiver or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

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

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written request to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status shall be permitted to use the term “podiatrist” but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the following requirements:
(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:
   1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application and requesting in writing that the license be made active;
   2. Have completed twenty (20) [fifteen-(45)] hours of board approved continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation; and
   3. Pay:
      a. The renewal fee of $150 established in 201 KAR 25:021, Section 1; and
      b. A reactivation fee of $100.
(b) If a licensee has been in inactive status for more than five (5) consecutive years, he shall:
   1. File a completed Application for Examination in accordance with 201 KAR 25.011 and pay the required fee;
   2. Be approved by the board to take the examination; and
   3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:
(a) A brief summary of the continuing education;
(b) The educational objectives of the continuing education;
(c) The date, time, and place of the provision of the continuing education;
(d) The name and credentials of the individual providing the continuing education; and
(e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:
(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;
(b) Is developed and provided by an individual with knowledge and experience in the subject area; and
(c) Contributes directly to the professional competence of a licensee.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Application for Examination, 4/00; and
(b) License Renewal Application, 1/02.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, 906B S. 12th Street, Murray, Kentucky 42071-2947, Monday through Friday, 8 a.m. to 4:30 p.m.

STUART A. NAULTY, DPM, President
APPROVED BY AGENCY: December 3, 2005
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC COMMENT AND PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held May 30, 2006, at 10 a.m. in Conference Room C located in the office of the Attorney General; 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 23, 2006, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Stuart A. Naulty, DPM; Board Secretary; 906B S. 12th St.; Murray, Kentucky 42071-2947; phone (270) 759-0007, fax (270) 753-0684.

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 continuing education requirements for licensees.
(b) The necessity of this administrative regulation: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. This administrative regulation establishes those continuing education requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.450(2) authorizes the board to set the requirements for continuing education of licensed podiatrist.

(2) This is an amendment to an existing administrative regulation, provide a brief summary of. (a) If the amendment will change the existing administrative regulation, This administrative regulation decreases the number of continuing education hours from 15 to 20 hours per renewal period.
(b) The administrative regulation creates Category A which encompasses traditional continuing education classes and Category B which is for less structured activities. It specifies the nature of the continuing education required to meet Category A and B requirements.

(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 administrative regulation decreases the number of continuing education hours from 15 to 20 hours per renewal period.
(b) The administrative regulation creates Category A which encompasses traditional continuing education classes and Category B which is for less structured activities. It specifies the nature of the continuing education required to meet Category A and B requirements.

(c) If the amendment conforms to the content of the authorizing statutes: KRS 311.450(2) authorizes the board to set the requirements for continuing education of licensed podiatrist.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by the administrative regulation: Approximately 120 licensed podiatrists in the Commonwealth.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation increases the number of continuing education hours from 15 to 20, bringing the requirement in line with other health care professionals such as medical doctors. This increase will help ensure continuing competence by licensed podiatrists in the Commonwealth. It should be noted that the five additional hours can be obtained by attendance at low cost in-house clinics and medical association meetings.

(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs associated with the initial implementation of this regulation.
(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(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 board does not anticipate any increase in fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all licensed podiatrists throughout the state.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(Amendment)
201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 335.535(8)
STATUTORY AUTHORITY: KRS 335.515(3),(6), 335.535(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3), (6) and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his license. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:
(a) A professional counseling course, designated by a professional counseling title or content; or
(b) An academic course, relevant to professional counseling.
(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.
(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.
(4) "Program" means an organized learning experience:
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or a series.
(5) "Provider" means an organization approved by the Kentucky Board of Licensed Professional Counselors for providing continuing education programs.
(6) "Relevant" means having content applicable to the practice of professional counseling as determined by the board.

Section 2. Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

Section 3. Methods of Acquiring Continuing Education Hours.
to obtain approval:
   (a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation on an annual basis for each program;
   (b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking the status:
1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2(2) of this administrative regulation;
   2. Does not exclude a licensee from its programs.
   (2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:
   (a) Is an organized program of learning;
   (b) Pertains to subject matters, which integrally relate to the practice of professional counseling;
   (c) Contributes to the professional competency of the licensee;
   and
   (d) Is conducted by individuals who have educational training or experience acceptable to the board.
Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.
   (2) A licensee shall:
   (a) Be responsible for obtaining required continuing education hours;
   (b) Identify his own continuing education needs and seek activities that meet those needs;
   (c) Seek ways to integrate new knowledge, skills and attitudes;
   (d) Select approved activities by which to earn continuing education hours;
   (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
   (f) At the time of renewal, list the continuing education hours obtained during the licensure renewal period;
   (g) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal;
   (h) Maintain records of continuing education hours;
   (i) The following items may be used to document continuing education activity:
   (a) Transcript;
   (b) Certificate;
   (c) Affidavit signed by the instructor; or
   (d) Receipt for the fee paid to the sponsor;
   (4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:
   (a) Refusal to renew license;
   (b) Suspension of license;
   or
   (c) Revocation of license.
   (5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.
Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(4) of this administrative regulation, directly to the licensee.
   (2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.
Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.
   (2) An appeal shall be:
   (a) In writing;
   (b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
   (c) Conducted in accordance with KRS Chapter 13B.
Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
   (a) Medical disability of the licensee;
   (b) Illness of the licensee or an immediate family member; and
   (c) Death or serious injury of an immediate family member.
   (2) A written request for waiver or extension of time involving medical disability or illness shall be:
   (a) Submitted by the person holding a license; and
   (b) Accompanied by a verifying document signed by a licensed physician.
   (3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
   (4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.
Section 10. Continuing Education Requirements for Reinstatement or Reactivation of License. (1) A person requesting reinstatement or reactivation of a license shall submit:
   (a) Evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board;
   (b) Upon request by the applicant, the board may permit the applicant to resume practice, with the provision that he shall obtain the ten (10) hours continuing education within three (3) months of the date on which the applicant is approved to resume practice.
   (2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.
PEGGY LYN KINETZ, Ed.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 17, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 2:00 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006, five workingdays 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: John Parrish, Executive Director, Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40622; phone (502) 564-4233; fax (502) 564-4816.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: James J. Grawe - 2075 -
(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the continuing education requirements for licensees.
(b) The necessity of this administrative regulation: This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.515(8) authorizes the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his license.
(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the exact requirements for continuing education, thus ensuring that the licensees know what the board expects.
(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 requires that continuing education providers renew their courses each year.
(b) The necessity of the amendment to this administrative regulation: To establish continuing education requirements for renewal.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.515(3) and (6) authorizes the board to set the requirements for continuing education of its licensees.
(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation ensures that continuing education courses are kept current.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will affect continuing education providers.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation continues the process for obtaining continuing education for licensure renewal.
(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation are included in the general cost of administering the board, and thus cannot be segregated.
(b) On a continuing basis: The costs are a part of the general costs of administering the board.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for enforcing this amendment will be funded by license fees paid by licensees and continuing education providers.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.
(8) This administrative regulation establishes the fee for review of proposed continuing education programs by the board for approval.
(9) TIERING: Is tiering applied? No. This administrative regulation applies to all continuing education providers throughout the state.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(AMENDMENT)


RELATES TO: KRS 335.515(1)(g)
STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)
NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1. Definitions. (1) "Client" means:

(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;
(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization;
(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult

(2) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.

Section 2. Responsibility to Clients. (1) A professional counselor shall:

(a) Advance and protect the welfare of his client;
(b) Respect the rights of a person seeking his assistance; and
(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;
(b) Exploit the trust and dependency of a client;
(c) Engage in a dual relationship with a client that might:
   1. Impair professional judgment;
   2. Incur a risk of exploitation of the client; or
   3. Otherwise violate a provision of this administrative regulation.

(3) If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:

1. Written informed consent by the client of their understanding of the general prohibitions against dual relationships;
2. Peer consultation by a licensed professional listed in 201 KAR 36:060, Section 3; and
3. Proper documentation of the precautions taken by the licensee.

(4) Engage in a sexual or an intimate relationship with a current client or with a former client for five (5) years following the termination of counseling;
(5) Use his professional relationship with a client to further his own interests;
(6) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;
(7) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;
(8) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;
(9) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;
(10) Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings;
(11) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 3. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.
(2) Professional counselors shall not disclose a client confidence except:

(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted by law.
(b) To prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a
defendant; or
(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional
counselor shall not disclose information from a particular family
member unless he has obtained a waiver from that individual fam-
ily member. If the family member is a minor, a custodial parent or
legal guardian may provide a waiver.
(3) A professional counselor may use client or clinical materials
in teaching, writing, and public presentations if:
(a) A written waiver has been obtained in accordance with
subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect client identity
and confidentiality.
(c) A professional counselor shall store or dispose of client
records so as to maintain confidentiality.

Section 4. Professional Competence and Integrity. A profes-
sional counselor shall maintain standards of professional compe-
tence and integrity and shall be subject to disciplinary action in
accordance with KRS 335 540:
(1)(a) Upon conviction of a felony, or a misdemeanor related to
his practice as a professional counselor; and
(b) Conviction shall include adjudication based on:
1. A plea of no contest or an "Alford Plea"; or
2. The suspension or deferral of a sentence.
(2) If his license or certificate is subject to disciplinary action by
another state's regulatory agency that the board determines vio-
lates applicable Kentucky state law or administrative regulation;
(3) Upon a showing of impairment due to mental incapacity or
the abuse of alcohol or other substances which could reasonably
be expected to negatively impact the practice of professional coun-
seling;
(4) If he misrepresented or concealed a material fact in ob-
taining a license, renewing a certificate, or reinstating a license;
(5) If he has refused to comply with an order issued by the
board; or
(6) He has failed to cooperate with the board by not
(a) Furnishing in writing a complete explanation to a complaint
filed with the board;
(b) Appearing before the board at the time and place design-
ated; or
(c) Properly responding to subpoenas issued by the board.

Section 5. Responsibility to His Student or Supervisee A pro-
cessional counselor shall:
(1) Be aware of his influential position with respect to a student
or supervisee;
(2) Avoid exploiting the trust and dependency of a student or
supervisee;
(3) Try to avoid a social, business, personal, or other dual rela-
tionship that could:
(a) Impair professional judgment; and
(b) Increase the risk of exploitation;
(4) Take appropriate precautions to ensure that judgment is not
impaired and to prevent exploitation if a dual relationship cannot be
avoided;
(5) Not provide counseling to a:
(a) Student,
(b) Employee; or
(c) Supervisee;
(6) Not engage in sexual intimacy or contact with a:
(a) Student; or
(b) Supervisee;
(7) Not permit a student or supervisee to perform or represent
himself as competent to perform a professional service beyond his
level of:
(a) Training;
(b) Experience, or
(c) Competence; and
(8) Not disclose the confidence of a student or supervisee
unless:
(a) Pursuant to KRS 202A. 400, 620 030, or 645.270 or as
otherwise permitted or mandated by law;
(b) It is necessary to prevent a clear and immediate danger to
a person;
(c) During the course of a civil, criminal, or disciplinary action
arising from the supervision, at which the professional counselor is
a defendant;
(d) In an educational or training setting, of which there are
multiple supervisors or professional colleagues who share respon-
sibility for the training of the supervisee; or
(e) In accordance with the terms of a written informed consent
agreement.

Section 6. Financial Arrangements. A professional counselor
shall:
(1) Not charge an excessive fee for service,
(2) Disclose his fees to a client and supervisee at the begin-
ing of service;
(3) Make financial arrangements with a patient, third-party
payor, or supervisee that:
(a) Are reasonably understandable; and
(b) Conform to accepted professional practices;
(4) Not offer or accept payment for a referral; and
(5) Represent facts truthfully to a client, third-party payor, or
supervisee regarding services rendered.

Section 7. Advertising. (1) A professional counselor shall:
(a) Accurately represent education, training, and experience
relevant to the practice of professional counseling; and
(b) Not use professional identification that includes a statement
or claim that is false, fraudulent, misleading, or deceptive, including
the following:
1. A business card;
2. An office sign;
3. Letterhead; and
4. Telephone or association directory listing.
(2) A statement shall be considered false, fraudulent, misleading,
or deceptive if it:
(a) Contains a material misrepresentation of fact;
(b) Is intended to or likely to create an unjustified expectation;
or
(c) Deletes a material fact or information.

Section 8. Referral and Termination. (1) A licensee shall make
a timely and appropriate referral of a client if:
(a) The licensee is unable to provide the work or service; or
(b) The client's need exceeds the competency of the licensee.
(2) A licensee shall terminate a professional counseling service
if a client:
(a) Has attained his stated goal or objective; or
(b) Fails to benefit from the counseling service.
(3) A licensee shall communicate the referral or the termination
to the counseling service to a client.
(4) A licensee shall not terminate counseling service or refer a
client for the purpose of entering into a personal relationship with
the client, including:
(a) A sexual, romantic relationship;
(b) A financial or business relationship; or
(c) Other activity that might serve a personal interest of the
licensee.

PEGGY LYNN KINNETZ, Ed D., Chair
ROBBIE RUDOLPH, Secretary
APPROVED BY AGENCY: February 17, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on the proposed administrative regulation shall be held on
May 22, 2006, at 2 p.m., at the Division of Occupations and Profes-
sions, 911 Leawood Drive, Frankfort, Kentucky. Individuals
interested in attending this hearing shall notify this agency in writ-
ing by May 15, 2006, five weekdays prior to the hearing, of their
intent to attend. If no notification of intent to attend the hearing is
received by that date, the hearing may be canceled. This hearing is
closed to the public. Any person who attends will be given an op-
portunity 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
VOLUME 32, NUMBER 11 — MAY 1, 2006

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d)
STATUTORY AUTHORITY: KRS 335.515(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) An applicant shall be deemed to have a degree in counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling".

(2) An applicant shall be deemed to have a degree in a related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(d) which includes a three (3) semester hour course in professional ethics and orientation in counseling.

(3) Degrees and graduate credit hours required under KRS 335.125(1)(d) shall be from a regionally-accredited institution.

(4) An institution shall be deemed to be a regionally-accredited institution if the institution of higher learning was accredited, at the time the degree was conferred, by a regional accrediting body recognized by the:
   (a) U S. Department of Education;
   (b) Council on Postsecondary Accreditation; or
   (c) Council on Postsecondary Education.

Section 2. (1) The practicum or internship required by KRS 335.525(1)(d) shall be completed within the organized sequence of study of the graduate degree of the applicant.

(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally-accredited university or college under the direction of a qualified graduate faculty member.

Section 3. After January 1, 2008, in order to meet the requirements of KRS 335.525(1)(d) or 335.57(1)(a), each applicant shall have completed a minimum of graduate course work in each area as follows:
   (1) The helping relationship, including counseling theory and practice - six (6) semester hours; three (3) of which shall be in behavior management or behavior therapy;
   (2) Human growth and development - six (6) semester hours in human development, personality or learning theory;
   (3) Lifestyle and career development - three (3) semester hours in lifestyle and career counseling or vocational counseling;
   (4) Group dynamics, process, counseling, and consulting - three (3) semester hours in group development, group dynamics, and group counseling theories;
   (5) Assessment, appraisal, and testing of individuals - three (3) semester hours;
   (6) Social and cultural foundation, including multicultural issues - three (3) semester hours;
   (7) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior - three (3) semester hours in diagnosis and treatment planning which includes the appropriate use of the current edition of the "Diagnostic and Statistical Manual for Mental Disorders";
   (8) Research and evaluation - three (3) semester hours; and
   (9) Professional orientation and ethics - three (3) semester hours in the application of professional ethics and orientation in mental health counseling.

PEGGY LYNN KINNETZ, Ed.D., Chair

2078
VOLUME 32, NUMBER 11 – MAY 1, 2006

ROBBIE RUDOLPH, Secretary
APPROVED BY AGENCY. February 17, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.

PUBLIC COMMENT AND PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 2006, at 2 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006, 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 shall 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: John Parmsh, Executive Director, Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Parmsh
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the educational requirements to qualify for licensure.
(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the educational requirements for licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have 60 graduate semester hours in specified areas. KRS 335.515(5) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.520 to 335.590.
(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the types of education that is acceptable for licensure.
(e) How the amendment will change the existing administrative regulation: The amendment to the administrative regulation specifies the internship requirements and the number of hours required in the areas identified in KRS 335.525(1)(d) and 335.525(1)(a).
(f) The necessity of the amendment to this administrative regulation: See (1)(b) above.
(g) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(h) How the amendment will assist in the effective administration of the statutes: The regulation specifies the requirements for obtaining the education necessary to qualify for licensure.
(i) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 625 persons in the Commonwealth.
(j) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation provides applicants with specific educational requirements for obtaining licensure.
(k) Estimate of how much it will cost to implement this administrative regulation:
(1) Initially: There are no costs associated with the implementation of this administrative regulation.
(2) On a continuing basis: There are no costs associated with the implementation of this administrative regulation.
(l) The source of funding for the implementation and enforce-

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:015. Boats and motor restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625, 150.930, 235.280, 235.930
STATUTORY AUTHORITY: KRS 235.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of this state. KRS 150.620 and 150.625 authorize the department to promulgate administrative regulations governing lands and waters it has acquired. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) Except as otherwise specified in this section, a person shall not operate on the lakes listed in this administrative regulation:
(a) A houseboat;
(b) A monohull boat, with a centerline length exceeding eighteen (18) feet, six (6) inches;
(c) A pontoon boat with a float or deck exceeding twenty-two (22) feet;
(d) A boat motor without an underwater exhaust; or
(e) Except in a designated skiing zone, a boat faster than idles speed when passing a boat with an occupant actively engaged in fishing.
(2) A person shall not operate:
(a) A monohull boat with a centerline length exceeding twenty-two (22) feet on:
1. Gust Creek Lake;
2. Lake Malone; or
3. Cedar Creek Lake.
(b) A pontoon boat with a float or deck exceeding thirty (30) feet on:
1. Lake Malone;
2. Lake Beshea; or
3. Cedar Creek Lake.
(3) Length restrictions in this section shall not apply to a canoe
(4) No person shall operate a personal water craft as defined in KRS 253.010 on Cedar Creek Lake.

Section 2. A person shall not operate an electric or an internal combustion boat motor on:
(1) Lake Chunley, Lincoln County;
(2) Dennie Gooch Lake, Pulaski County;
(3) Martin County Lake, Martin County; and
(4) Kegamum Come Lake, Harlan County.

Section 3. A person shall not operate an internal combustion boat motor on:
(1) Carter Caves Lake, Carter County;
(2) Spurlington Lake, Taylor County;
(3) Marion County Lake, Marion County;
(4) Lake Washburn, Ohio County;
(5) Bert Combs Lake, Clay County;
(6) McNeeley Lake, Jefferson County;
(7) Lake Maupin, Union County;
(8) Carpenter Lake and Kingfisher Lakes, Daviess County;
(9) Metcalfe County Lake, Metcalfe County;  
(10) Briggs Lake, Logan County;  
(11) Big Turnor Lake, Ballard County;  
(12) Little Turnor Lake, Ballard County;  
(13) Shelby Lake, Ballard County;  
(14) Mitchell Lake, Ballard County;  
(15) Happy Hollow Lake, Ballard County;  
(16) Burnt Slough, Ballard County;  
(17) Butler, Ballard County;  
(18) Sandy Slough, Ballard County;  
(19) Long Pond, Ballard County;  
(20) Cross Slough, Ballard County;  
(21) Little Green Sea, Ballard County;  
(22) Burnt Pond, Ballard County;  
(23) Arrowhead Slough, Ballard County;  
(24) Deep Slough, Ballard County;  
(25) Beaver Dam Slough, Ballard County;  
(26) Cypress Slough, Ballard County;  
(27) Twin Pockets Slough, Ballard County;  
(28) Lake Reba, Madison County;  
(29) Lincoln Homestead Lake, Washington County;  
(30) Lake Maloneberg County;  
(31) Island, Ohio County;  
(32) South, Ohio County;  
(33) Lebanon City Lake, Marion County; [pr]  
(34) Mill Creek Lake, Wolfe County; or  
(35) Pikeville City Lake, Pike County

Section 4. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:  
(1) Shanty Hollow Lake, Warren County;  
(2) Bullock Pen Lake, Grant County;  
(3) Boltz Lake, Grant County;  
(4) Kincaid Lake, Pendleton County;  
(5) Elmer Davis Lake, Owen County;  
(6) Beaver Lake, Anderson County;  
(7) Corinth Lake, Grant County; and  
(8) Swan Lake, Ballard County.

Section 5. A person shall not operate:  
(1) A boat motor larger than 150 horsepower on Lake Beshear, or Lake Malone; unless provided by subsection 2 of this section.  
(2) At Lake Malone, motorboats with 200 horsepower or less shall be permitted from the first weekend after Labor Day through the first weekend prior to Memorial Day.  
(3) A motorboat faster than idle speed on:  
(a) Campico Lake, Nicholas County,  
(b) Greenbo Lake, Greenup County;  
(c) Pan Bowl Lake, Breathitt County; or  
(d) Willgreen Lake, Madison County.

Section 6. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:  
(1) Herb Smith/Cranks Creek Lake; and  
(2) Martins Fork Lake.

MARK S. CRAMER, Deputy Commissioner  
For DR. JONATHAN GASSETT, Commissioner  

GEORGE WARD, Secretary  
APPROVED BY AGENCY: March 3, 2006  
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Admiral L. Mitchell Building, #1 Sportsman's Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:  
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack  
(1) Provide a brief summary of:  
(a) What the administrative regulation does: This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.  
(b) The necessity of the administrative regulation: To govern the fair, reasonable, equitable, and safe use of all waters of the Commonwealth.  
(c) How does this administrative regulation conform to the authorizing statute: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state. KRS 150.620 and 150.625 authorize the department to promulgate administrative regulations governing lands and waters it has acquired.  
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.620, 150.625, and 235.280 by allowing for the safe, equitable, and reasonable use of the small 21-acre Pikeville City Lake by all users by restricting the boaters on this small lake to electric trolling motor only.  
(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: Internal combustion motors will no longer be allowed at Pikeville City Lake. Boats will be limited to the use of electric trolling motors only.  
(b) The necessity of the amendment to this administrative regulation: To allow for the safe, fair, and equitable use of the small 21-acre Pikeville City Lake by all boaters.  
(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.  
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.  
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All people that boat at Pikeville City Lake.  
(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: Anglers on Pikeville City Lake will not be impacted since an existing city ordinance prevented the use of outboard motors. Anglers are currently utilizing electric trolling motors to access this lake by boat. This regulation codifies an existing city ordinance to allow the department's law-enforcement personnel to enforce this use restriction. These changes will a safe and equitable use of this small lake by all boaters.  
(5) Provide an estimate of how much it will cost to implement this administrative regulation:  
(a) Initially: There will not be additional cost to the agency to implement this administrative regulation.  
(b) On a continuing basis: There will be no cost on a continuing basis 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 will fund the administrative and distributional cost while the 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 any other fees or to increase 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 will be established.
(9) TIERING: Is tiering applied? Tiering was not used, because all people using the Pikewiwe City Lake will be treated the same.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.520
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1), 150 520
STATUTORY AUTHORITY: KRS 150.025(1), 150.520 grants the department specific authority to regulate the taking, buying and selling of mussels and to require reporting of mussel sorting operations. This administrative regulation establishes licensing requirements, seasons, size limits, waters open, and reporting requirements for mussel sorting.

Section 1. Section 1. Definitions. (1) "Brail" means a wood or metal rod with attached hooks which is dragged across the bottom to take mussels.
(2) "East side" means the area in Kentucky Lake or Barkley Lake east of the line of red navigational buoys marking the main channel.
(3) "Mussel" means:
(a) An intact live or dead mussel;
(b) A mussel shell; or
(c) A part of a mussel shell.
(4) "To brail" means to take mussels using a brail.
(5) "To mussel" means to take mussels by means of commercial mussel sorting gear.
(6) "West side" means the area in Kentucky Lake or Barkley Lake west of:
(a) The line of red navigational buoys marking the channel; or
(b) A water depth of fifty-five (55) feet.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall possess a mussel license if he:
(a) Has more than six (6) mussels in his possession, unless he has a mussel buyer's license;
(b) Possesses commercial mussel sorting equipment while on the water; or
(c) Sells or attempts to sell a mussel.
(2) A licensed musseler may be accompanied by one (1) unlicensed helper.
(3) An unlicensed helper shall not perform an act authorized by a musseler unless he is in the presence of a licensed musseler.

Section 3. A person shall not:
(1) Sell a mussel unless he has a valid:
(a) Mussel license; or
(b) Mussel buyer's license.
(2) Buy a mussel:
(a) Unless he has a valid mussel buyer's license; and
(b) Except from a person holding a valid:
1. Mussel license; or
2. Mussel buyer's license.

Section 4. A musseler shall paint or affix his department issued identification number to his brail boat so it is clearly visible to aerial observation.

Section 5. (1) To apply for a mussel license, a person shall:
(a) Complete a Mussel License Application Form;
(b) Submit the completed form to the department during the month of November; and
c) Include the license fee as stipulated in 301 KAR 3:022.
(2) The department shall issue a mussel license only to a person who had previously purchased a mussel license between January 1, 2001 and November 10, 2005.
(c) Mussel license holders who purchased a mussel license between January 1, 2001 and November 10, 2005 shall not be allowed to transfer the mussel license buying privilege to another person.
(d) If the number of applications exceed 100, the department shall:
1. Issue licenses to current mussel license holders; and
2. Conduct a random drawing of the remaining applications until 100 licenses have been issued.
(e) If the number of applications is fewer than 100, the department shall:
1. Applicants who apply before November 30, and
2. Persons applying after November 30 on a first-come, first-served basis until 100 licenses have been issued.

Section 6. (1) A person shall not mussel:
(a) Within 200 yards below a dam; or
(b) Except in the waters specified in subsection (2) of this section.
(2) The following waters shall be open to musseling:
(a) Kentucky Lake, except embayments as defined by the Kentucky Lake Musseling Waters Map shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(b) Barkley Lake, except embayments as defined by the Barkley Lake Musseling Waters Map shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(c) Tennessee River downstream from river mile seventeen and eight-tenths (17.8) shall be open to mussel brailing until February 28, 2016, or until an alternative mussel harvest method is established by the department;
(d) Cumberland River downstream from the U.S. Highway 62 bridge shall be open to mussel brailing until February 28, 2016, or until an alternative mussel harvest method is established by the department;
(e) Ohio River downstream from the western boundary of Mammoth Cave National Park, except from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek;
(f) Barren River downstream from Barren River Lake dam, except from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch;
(g) Kentucky River downstream from Beattyville;
(h) Rough River downstream from Rough River Lake dam; and
(i) Rolling Fork River.

Section 7. (1) Except as otherwise stipulated in this section, a person shall not mussel except between 6 a.m. and 6 p.m.
(2) Musseling hours shall be:
(a) 8 a.m. to 3:30 p.m. during December through February;
(b) 8 a.m. to 6 p.m. during the remainder of the year on the following waters:
1. The west side of:
   a. Kentucky Lake; or
   b. Barkley Lake;
2. The canal connecting Kentucky and Barkley Lakes; and
3. From Cumberland River mile 36.2 at Big Horse Ford Light downstream to Barkley Lake Dam.

(3) Mussel hunting shall be:
(a) 9:30 a.m. to 3 p.m. during December through February; and
(b) 9:30 a.m. to 5 p.m., during the remainder of the year on the east side of:
   1. Kentucky Lake; or
   2. Barkley Lake.

Section 8. A person may mussel year-round, except:
(1) A person shall not mussels on Saturday or Sunday:
   (a) On Kentucky Lake:
      1. In March; or
   2. From the Saturday before Memorial Day through Labor Day.
   (b) On Barkley Lake, from the Saturday before Memorial Day through September 30.
   (2) On Kentucky Lake or Barkley Lake, a person shall not mussels on:
      (a) Memorial Day; 
      (b) Independence Day; or
      (c) Labor Day.

Section 9. (1) A person shall:
(a) Determine the size of a mussel by attempting to pass the mussel through a circular opening with an inside diameter equal to the specified size limit.
(b) Immediately return a mussel which passes through the circular opening to the mussel bed from which it was taken.
(2) The mussel size limit shall be two and one-half (2 1/2) inches except as specified in this section.
(3) There shall not be a size limit on the Asiatic clam (Corbicula sp.)

(4) The size limit for the following species shall be:
   (a) Washboard mussel, Megalanora nervosa: Four (4) inches.
   (b) Three and thirteen-sixteenths (3 13/16) inches from March 1, 2000, through February 28, 2004.
   (c) Three and thirteen-eighths (3 7/8) inches from March 1, 2004, until February 28, 2002;
   (d) Three and fifteen-sixteenths (3 15/16) inches from March 1, 2002, until February 28, 2003; and
   (e) Four (4) inches thereafter.
   (f) Three (3) ridge mussel, Ambloema picata: Two and three-fourths (2 3/4) inches.

(6) A person:
   (a) May possess mussels that were of legal size when harvested, but which fall below the increased size limits as specified in this section, until the last day of February after the date of the size limit increase.
   (b) Shall not possess undamaged shells while on the water; no matter when the shells were taken.

Section 10. A person shall not:
(1) Mussel, except by braid.
(2) Use or possess:
   (a) On the water:
      1. A braid longer than sixteen (16) feet;
      2. More than two (2) braids;
      3. A braid hook:
         a. Made of wire smaller than fourteen (14) gauge; or
         b. With a prong larger than one and one-fourth (1 1/4) inch, measured from the tip of the point to where the prongs are joined.
   (b) On a licensed braid boat:
      1. A dredge; or
      2. A compressed air tank.

Section 11. (1) A mussel license holder shall submit an annual written report to the department:
(a) By December 31 of each year;
(b) On a form provided by the department furnishing the following information:
   1. Name, address and mussel license number;
   2. Dates of brailing activity;
   3. Waters brailed;
   4. Name or category of mussels taken;
   5. Weight of each type or category;
   6. Price received per pound of each type or calagary;
   7. Total value of mussels sold,
   8. Name and license number of buyer who bought mussels.
(2) The department shall not renew the license of a person who does not submit a complete report.

Section 12. (1) A mussel buyer shall:
(a) Complete a mussel transaction record form each time he acquires a mussel.
(b) Use forms in sequential order.
(c) Write on voided forms:
   1. The word "void;"
   2. His mussel buyer's license number;
   3. The current date; and
   4. His signature.
(d) Mail completed forms, including voided forms:
   1. To the department;
   2. In time to arrive on the fifteenth of each month.
(e) If a shell was not acquired during a month, submit a report stating that no business was conducted.
(2) The department shall cancel the license of a mussel buyer until:
   (a) All monthly forms are received; and
   (b) The information required on the form is provided.

Section 13. A mussel designated as endangered shall not be taken.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Kentucky Lake Musselings Waters Map, 1993;
(b) Barkley Lake Musselings Waters Map, 1993;
(c) Mussel License Application Form, 1996;
(d) Mussel Harvest Report Form, 1990;
(f) List of commercial mussel fisherman who purchased a commercial mussel license between January 1, 2001, and November 10, 2005.

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

MARK S CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchel Building, #1 Sportsman’s Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7103, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes licensing requirements, seasons, size limits, waters open, and reporting requirements for musseling.
(b) The necessity of the administrative regulation: To effectively manage the commercial harvest of freshwater mussels 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 the taking of wildlife. KRS 150.520 grants the department specific authority to regulate the taking, buying, and selling of mussels and to require reporting of musseling operations.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) and 150.520 by limiting the number of persons who can harvest mussels, setting seasons and size limits on mussels, where and how mussels can be harvested, reporting and harvest requirements for persons that harvest mussels in Kentucky's waters, and regulates the buying and selling of mussels. This will ensure the conservation of freshwater mussels in 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 will eliminate the commercial harvest of mussels in Green, Barren, Kentucky, Rough, and Rolling Fork rivers. Commercial harvest of mussels by braiding in Kentucky and Barren lakes will remain open until February 28, 2011, or until an alternative mussel harvest method is established while harvest of mussels by braid in the Ohio River, and lower sections of the Tennessee and Cumberland rivers will remain open until February 28, 2016, or until an alternative method is established by the department. It also restricts the licensing and the sale of the non-transferable mussel license to those persons that had previously purchased a license between January 1, 2001 and November 10, 2005.
(b) The necessity of the amendment to this administrative regulation: To effectively manage the freshwater mussel resources in Kentucky. This amendment will reduce the potential harvest of Federally threatened, endangered, or imperiled mussels found in Kentucky. It also allows persons that currently braid for mussels to continue for a defined period of time or until an alternative method is established.
(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or states and local governments that will be affected: Persons who commercially harvest freshwater mussels from the waters of the Commonwealth.
(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 changes if it is an amendment: Commercial mussel license holders have significantly declined in Kentucky from over 200 license holders in 1990 to 16 in 2005. This decline is market driven since the demand for commercially-caught mussels has declined. Low numbers of shells are harvested per license holder. Mussel harvesting will be permitted to continue for a limited time on the primary water bodies where mussel harvest occurs. Therefore, the limited numbers of mussel license holders have been provided a fair and unbiased method to close the fishery to the braiding method or until an alternative harvest method is found.
(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. On a continuing basis: There will be no additional cost to the agency.
(b) The necessity of the administrative regulation: The administrative regulation is necessary to protect the fish populations in the Commonwealth.
(c) How does this administrative regulation conform to the
Section 2. Propagation Permit Requirements and Application Procedures. (1) Before acquiring or propagating aquatic organisms, a person shall obtain a permit. (2) Permit applicants may obtain the Fisheries Commercial Propagation Application form from the department.

Section 3. Acquisition of Brood Stock from Public Waters. (1) A permit holder may obtain from public waters a maximum of 1,500 minnows or crayfish per surface acre of water used for propagation of a particular species. (2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both minnows and crayfish. (3) A wildlife and boating officer shall supervise the acquisition of brood stock from public waters. (4) Permit holders shall use gear authorized by 301 KAR 1:130, live bait for personal use, to acquire aquatic organisms from public waters. Upon request at the time of application for a permit, the department may authorize applicants to use seine sizes larger than ten (10) feet in length, gillnets, and other fish collection gears. (b) Permit holders shall attach a metal tag, furnished by the department, to authorized seines over ten (10) feet, gillnets, and other fish collection gears showing: 1. The name of the owner; 2. Gear type; and 3. The date the permit expires. (c) Permit holders shall use these approved fish collection gears in waters designated in the application.

Section 4. [Inspection of Facilities and Revocation of Permits.] (1) The permit holder shall allow a wildlife and boating officer to inspect his facilities. (2) If the officer finds a violation of the terms of the administrative regulation, the department shall immediately revoke the permit. (3) Fees paid for revoked permits shall not be refunded.

Section 5. [Sale of Aquatic Organisms.] Permit holders may sell propagated aquatic organisms.

Section 6. The department may issue a permit with no fee to elementary, middle and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.

Section 7. The commissioner may grant approval and issue a permit for paddyfish to be stocked and reared in approved water supply lakes for aquaculture purposes as provided for in 301 KAR 1:110 by completing a Fishesnes Commercial Propagation Application and submitting it to the Fishesnes Division.

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listed on the propagation permit application.

(7) A propagation permit shall be obtained annually for each year of the paddlefish rearing period.

(8) The department will not enforce the protection of the stocked paddlefish nor establish paddlefish sport fish regulations in any of the approved water supply lakes.

(9) Paddlefish that escape in the stream, either above or below the weir, shall not be considered property of the permit holder.

(10) The department shall not be responsible for corrective actions with any fish populations in the approved lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the approved water supply lakes.

(12) The permit holder that has been issued the Fisheries Commercial Propagation permit may use Gill nets to take paddlefish only from the lakes that have been approved and are listed on the propagation permit and shall be on site each time Gill nets are used in the approved water supply lakes.

(a) The department shall be notified at least one (1) week in advance of any harvest of paddlefish from the approved water supply lakes, including the random sampling of the stocked paddlefish that require the use of Gill nets.

(b) Gill nets shall only be used in the approved water supply lakes from December 1 through the last day of March.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(2) Permit holders shall attach a metal tag provided by the department to each Gill net used.

(a) Paddlefish shall be the only species of fish harvested; any other species of fish captured shall be immediately released, without undue injury, to the waters where it was taken.

Section 7. Inspections of Facilities and Revocation of permits.

(1) The permit holder shall allow a conservation officer to inspect his facilities.

(2) The department shall:

(a) Revoke the permit of a person found guilty of violating a statuto or administrative regulation pertaining to propagation of fish and

(b) Not renew the propagation permit for a period of up to three years of a person that has been found guilty of violating a statute or administrative regulation pertaining to propagation of fish.

(3) Fees paid for revoked permits shall not be refunded.

Section 8. [7.] Incorporation by Reference. (1) "Fisheries Commercial Propagation Permit Application", 4/2000 [4/2006] is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fishes, Department of Fish and Wildlife Resources, #1 Sportsman's Lane [Game-Farm Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. and 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements for a permit and requirements that shall be followed by permit holders.

(b) The necessity of the administrative regulation: KRS 150.280 provides that no person shall propagate or hold wildlife without a permit. This administrative regulation establishes the requirements for the permit and what the permit holder is required to do.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.280 authorizes the department to promulgate administrative regulations governing all activities associated with propagating and holding protected wildlife.

(d) How will this administrative regulation assist in the effective administration of the statute: This administrative regulation will carry out the purposes of KRS 150.280 by providing individuals, after obtaining the necessary permits, the ability to propagate and hold protective wildlife.

(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. Holders of the propagation permit will now be able to stock and rear paddlefish in a limited number of approved water supply lakes for aquaculture purposes.

(b) The necessity of the amendment to this administrative regulation: Currently, the stocking of paddlefish in selected water supply lakes for aquaculture purposes is not allowed. In addition, there are no legal methods that could be used to harvest the paddlefish from the approved water supply lakes. This amendment to the administrative regulation will allow persons the ability to stock paddlefish in approved lakes for aquaculture purposes and the legal methods by which to harvest them.

(c) How this amendment will assist in the effective administration of the statute: See (1)c above.

(d) How the amendment will assist in the effective administration of the statute: See (1)d above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All people wanting to rear and propagate paddlefish in water supply lakes for commercial aquaculture purposes.

(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: This amendment to the administrative regulation will allow those persons wanting to rear paddlefish in approved water supply the ability to do so. This amendment also provides them with a way to legally harvest paddlefish after they are stocked into the approved water supply lakes.

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

(a) Initially: There will be additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis 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 will fund the administrative and distributional cost while the 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 any other fees or to increase 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 will be established.
(9) TIERING: Is tiering applied? Tiering was not used because all people wanting to stock paddlefish into water supply lakes will be treated the same.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:122. Importation, possession; live fish.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.190
STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the taking of wildlife to carry out the purposes of KRS Chapter 150, including the protection and conservation of wildlife. This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

Section 1. No live fish, live minnow or live bait organisms, including a reproductive part thereof, not native or established in Kentucky waters shall be bought, sold, possessed, imported, used or released into the waters of this Commonwealth, except as specified in Sections 2 and 4 of this administrative regulation.

Section 2. Exceptions. (1) Aquarium species except those in Section 3 of this administrative regulation may be imported, sold, or possessed in aquaria, but shall not be released directly or indirectly into the waters of this Commonwealth.
(2) Triploid (sterile) grass carp (Ctenopharyngodon idella) may be imported, sold, or possessed provided the proper permit is obtained as provided in 301 KAR 1:171.
(3) Diploid (fertile) grass carp may be imported and possessed only by certified propagators for the exclusive purpose of producing triploid grass carp.
(4) Other nonnative fishes may be imported, possessed, and sold with the approval of the Division of Fishes.

Section 3. The following live aquatic organisms shall not be imported, sold, or possessed in aquaria:
(1) Subfamily Serrasalminae [Serrasalmidae] - piranha, plaraya, pirarucu, or tiger characins.
(2) Astatotilapia [kelafas] mexicanus - Mexican banded tetra, Mexican minnow or Mexican tetra.
(4) Genus Claris - walking catfish.
(6) Dreissena polymorpha - zebra mussel.

Section 4. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the species of aquatic life which are prohibited in the Commonwealth.
(b) The necessity of the administrative regulation: To authorize the department to promulgate administrative regulations regarding the taking of wildlife to carry out the purposes of KRS Chapter 150, including the protection and conservation of wildlife.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the Department to promulgate administrative regulations regarding the taking of wildlife to carry out the purposes of KRS 150 Chapter 150, including the protection and conservation of wildlife.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 regarding the taking of wildlife to carry out the purposes of KRS 150 Chapter 150, including the protection and conservation of wildlife by establishing those species of live aquatic organisms that shall not be imported, sold or possessed in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment is a cleanup that corrects misspelled names and scientific name changes.
(b) The necessity of the amendment to this administrative regulation: To correct misspelled names and changes in scientific names.
(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: No individuals, business, organization or state or local government will be affected by this clean up.
(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: Commercial anglers will be minimally affected. The amendments to this administrative regulation will not affect any persons in Kentucky.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no cost on a continuing basis.
(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 will fund the administrative and distributional cost while the 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 any other fees or to increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation estab-
ishes any fees directly or indirectly increases any fees: No fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because all people in the Commonwealth will be treated the same.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.390
STATUTORY AUTHORITY: KRS 150 025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150 025
authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and the areas from where fish may be taken. This administrative regulation establishes the areas where commercial fishing is permitted.

Section 1. Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing.
(a) Barren River from its junction with Green River upstream toGreencastle, Kentucky;
(b) Big Sandy River from its junction with the Ohio River upstream to the junction of the Levisa and Tug Forks;
(c) Levisa Fork from its junction with the Big Sandy River upstream to 200 yards below the mouth of Paint Creek in Johnson County;
(d) Cumberland River from its juncture with the Ohio River upstream to the Highway 62 bridge;
(e) Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;
(f) Green River from its junction with the Ohio River upstream to 200 yards below Lock and Dam 6,
(g) Highland Creek from its juncture with the Ohio River upstream to the Rock Ford Bridge in Union County;
(h) Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;
(i) North Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Walker's Creek;
(j) South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;
(k) Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;
(l) Muskingum River from the mouth of the Ohio River downstream to the Tennessee line;
(m) Ohio River from its juncture with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where slat baskets are the only piece of commercial gear allowed except for the first 200 yards below the dam as prescribed by KRS 150.445.
1. Lock and Dam 53 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.
2. Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.
3. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall.
4. J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.
5. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall.
6. Canneton Dam downstream to a line perpendicular to the end of the outer lock wall.
7. McAlpine Dam downstream to the K&I railroad bridge.
8. Markland Dam downstream to a line perpendicular to the end of the outer lock wall.
9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.
10. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.
11. Pond River from its juncture with the Green River upstream to the Highway 62 bridge;
12. Panther Creek from its juncture with the Green River upstream to the head of the creek;
13. Rough River from its juncture with the Green River upstream to the Highway 69 bridge at Dunhee, Kentucky;
14. Tennessee River from its juncture with the Ohio River upstream to River Mile 17.8;
15. Tradewater River from its juncture with the Ohio River upstream to the Highway 365 bridge; and
16. Salt River from its juncture with the Ohio River upstream to the northwestern boundary of Fl. Knox.
(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream except as specified in subsection 3. (noted below)
(a) Barkley;
(b) Cumberland Lake is closed above the confluence of Koger Creek on the Big South Fork Tributary;
(c) Hartington;
(d) Kentucky;
(e) Nolin;
1. Open to commercial fishing through February 28, 2011.
2. Only those persons reporting commercial harvest from Nolin River only, from March 1, 2010 through February 28, 2006, shall be permitted to commercially fish Nolin River Lake.
(e) (f) Rough River;
1. Open to commercial fishing through February 28, 2011.
2. Only those persons reporting commercial harvest from Rough River only, from March 1, 2009 through February 28, 2006, shall be permitted to commercially fish Rough River Lake.
(3) Exceptions
(a) Cumberland Lake is closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary;
(b) Permanent overflow lakes adjacent to the Mississippi and Ohio Rivers that can be accessed from either river by a boat during high flow conditions are open to statewide commercial fishing during these high flow events except as prohibited on department wildlife management areas in 301 KAR 4 050 and 301 KAR 4 050.
(c) Permanent overflow lakes along the Mississippi and Ohio Rivers when access from either river by a boat is not possible.
1. A no-charge commercial Asian carp removal permit shall be obtained, following landowner and Fisheries Division approval, to remove any rough fish, except carp, and paddlefish.
2. Only licensed commercial fishermen shall be eligible for the permit.
3. Permit holders shall follow all gear restrictions listed in 301 KAR 1:146 and requirements described in 301 KAR 1:155.
4. The permit shall be valid for a period of ninety (90) days from the date of issuance.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) Overflow lakes directly connected to the Mississippi and Ohio Rivers;
(d) Dowry Lake is open upstream to Buffalo Bridge; and
(e) Barren Lake.

MARK S. CRAMER, Deputy Commissioner
For ER. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006, at 10 a.m. at the Department of Fish and Wildlife
Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the areas where commercial fishing is permitted.

(b) The necessity of the administrative regulation: To effectively manage the commercial harvest of fish in Kentucky by establishing the waters open to commercial fishing.

(c) How will this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and creel and the areas from where fish and creel may be taken.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by listing the waters that are open to commercial fishing in 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 will eliminate commercial fishing at Dewey and Barron River lakes. It will also allow commercial fishing to remain open at Nolin River and Rough River lakes through February 28, 2011, for the commercial fishermen who reported commercial harvest of fish from the lakes from March 1, 2000 through February 28, 2006. After February 28, 2011, Rough River and Nolin River lakes will be closed to commercial fishing. This amendment will also establish a no-cargo rough fish removal permit that commercial fishermen can obtain with Department and last year approach to harvest rough fish, excluding paddlefish and catfish, from overflow lakes along the Mississippi and Ohio rivers.

(b) The necessity of the amendment to this administrative regulation: To effectively manage the fisheries resources. This amendment will reduce conflicts between commercial and sport fishermen. It also allows persons that currently commercially fish at Rough and Nolin river lakes to continue for 5 years. The establishment of the free permit to remove rough fish in overflow lakes along the Mississippi and Ohio rivers will allow commercial fishermen to fish these areas when they are no longer directly connected to the river by a navigable channel. This permit is needed to allow commercial fishermen the ability to remove rough fish from these areas, especially Asian Carp, when the overflow lakes are no longer connected to the river.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who commercially fish in waters of the Commonwealth.

(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: Commercial fishermen will be minimally affected. The amendments to this administrative regulation will not affect Kentucky's commercial fishermen negatively since there is minimal commercial harvest from these lakes. Commercial fishing at Rough River and Nolin River lakes will remain open to commercial fishermen through February 28, 2011, or those fishermen reporting harvesting of fish from the lakes from March 1, 2000 to February 28, 2006. This amendment will open overflow lakes to commercial fishing once those overflow lakes are no longer connected to the river.

(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 including water patrol.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary.

(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 people who commercially fish the waters of Kentucky will be treated the same.

COMMERCIAL COUNCIL
Department of Fish and Wildlife Resources

RELATES TO: KRS 150.470, 150.990(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:
(a) Made of:
1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and
(b) Not having attached:
1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing materials upon which fish might eat in the water for the purpose of attracting fish to a particular area in order that they might be taken.

(3) "Cull" means to replace a fish in your daily creel limit with another fish of the same species.

(4) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) day or have in possession while fishing.

(4) "Daylight hours" are defined by KRS 150.010(6).
(d) [49] "Kentucky bass" means the following with a patch of teeth on its tongue:
(a) Largemouth bass;
(b) Kentucky bass; or
(c) Coosa bass.
[66] "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.
(6) [69] "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.
(9) [73] "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.
(10) [68] "Release" means to return a fish:
(a) In the best possible physical condition;
(b) Immediately after removing the hook;
(c) To the water from which it was taken; and
(d) In a place where the fish's immediate escape shall not be prevented.
(11) [69] "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be handled or possessed and where the use of artificial bait is the only bait permitted.
(12) [46] "Single hook" means a hook with no more than one point.
(13) [44] "Size limit" means the minimum legal length of a fish.
(14) [42] "Slot limit" means that a person:
(a) Shall release fish within a specified minimum and maximum size; and
(b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:80, a person fishing in public or private waters shall observe the following daily possession and size limits.
(a) Black bass: daily limit, six (6); possession limit, twelve (12).
(b) Largemouth bass and smallmouth bass: size limit, twelve (12) inches.
(b) Kentucky bass and Coosa bass: no size limit.
(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.
(c) Sauger, walleye, and their hybrids: daily limit, singly or in combination, six (6); possession limit, twelve (12); size limit, wall-eye and their hybrids, fifteen (15) inches; no size limit for sauger.
(d) Muskellunge: daily limit, one (1), possession limit, two (2); size limit, thirty (30) inches.
(e) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.
(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15); possession limit, thirty (30); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
(g) striped bass: daily and possession limit, five (5); size limit, fifteen (15) inches.
(h) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.
(i) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.
(j) Redear sunfish: daily limit; twenty (20); possession limit, forty (40); no size limit.
(2) A person shall release grass carp caught from a lake owned or managed by the department.
(3) A person shall release fish:
(a) Below the minimum size limits established by this administrative regulation;
(b) Within a protected slot limit established by this administrative regulation; or
(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.
(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.
(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:
(a) Obtain the fish from a licensed fish propagator or other legal source; and
(b) Retain a receipt or other written proof that the fish were legally acquired.
(6) A person shall release trout unless he:
(a) Has a valid trout permit;
(b) Is exempted from trout permit requirements by KRS 150.17(10); or
(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.
(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.
(2) Berkley Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, ten (10) inches.
(c) Sauger: size limit, fourteen (14) inches.
(d) Beaver River Lake, including:
(a) Beaver River to the Highway 100 bridge;
(b) Long Creek to the Highway 100 bridge;
(c) Beaver Creek to the Highway 1237 bridge;
(d) Slaggs Creek to the Mathews Mill Road bridge; and
(e) Peter Creek to the Peter Creek Road bridge.
1. Crappie: size limit, nine (9) inches.
2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.
(3) Beaver Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(5) Bert Combs Lake. A person shall not possess shad or use shad for bait.
(6) Beshears Lake: channel catfish: size limit, twelve (12) inches.
(7) Boltz Lake.
(a) A person shall not possess shad or use shad for bait.
(b) Channel catfish: size limit, twelve (12) inches.
(8) Briggs Lake. A person shall not possess shad or use shad for bait.
(9) Buckhorn Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Muskellunge: size limit, forty (40) inches.
(c) Crappie size limit, nine (9) inches.
(10) Bullock Pen Lake: channel catfish: size limit, twelve (12) inches.
(11) Camico Lake: largemouth bass, size limit fifteen (15) inches.
(12) Carpenter Lake. A person shall not possess shad or use shad for bait.
(13) Carr Creek Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.
(14) Carter Caves State Park Lake.
(a) Fishing shall be during daylight hours only.
(b) Largemouth bass: daily limit, three (3) fish; possession limit six (6) fish; size limit, fifteen (15) inches.
(c) A person shall not possess shad or use shad for bait.
(15) Cave Run Lake.
(a) Largemouth bass: slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.
(b) Smallmouth bass: size limit, sixteen (16) inches.
(16) Cedar Creek Lake.
(a) Largemouth bass: size limit, twenty (20) inches; daily limit: one (1) fish.
(b) Crappie: size limit, nine (9) inches; daily limit: fifteen (15) fish.
(c) Bluegill and Redear sunfish (shellcracker): daily limit: thirty (30) fish, singly or combined.
(d) Channel catfish: size limit, twelve (12) inches; daily limit: four (4) fish.
(e) A person shall not possess shad or use shad for bait.
(17) Chimney Top Creek.
(a) Brown trout: size limit, sixteen (16) inches; creel limit, one (1), artificial bait only.
(18) Corinith Lake.
(a) A person shall not possess shad or use shad for bait.
(b) Channel catfish: size limit, twelve (12) inches.
(19) Cumberland Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit shall be eighteen (18) inches.
(c) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.
(d) Crappie: size limit, ten (10) inches.
(20) Cumberland River downstream from Barkley Lake Dam.
(a) Largemouth bass: size limit, fourteen (14) inches.
(b) 21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.
(a) Brown trout: size limit (no call), twenty (20) inches; creel limit, one (1); (b) Rainbow trout: slot limit (no call), fifteen (15) to twenty (20) inches; creel limit five (5) fish, which shall not include more than one (1) fish greater than twenty (20) inches; and 
(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
(22) Cypres MAXX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas. On impounded waters of the area:
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6).
(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).
(c) Channel catfish: daily and possession limit, four (4).
(d) A person shall not fish. 1. Except during daylight hours; or 2. On Starfire Lake between January 1 and May 31.
(23) Dale Hollow Lake.
(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
(b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches.
(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.
(d) Rainbow trout and lake trout.
1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.
2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.
(a) Largemouth bass: size limit, fifteen (15) inches; (b) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.
(g) Crappie: size limit, ten (10) inches; daily limit, fifteen (15). (24) Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(25) Dix River for two (2) miles downstream from Herrington Lake Dam.
(a) A person shall not fish except with an artificial bait.
(b) Brown trout: size limit, fifteen (15) inches.
(26) Dog Fork, Wolfe County. A person shall:
(a) Not fish except with an artificial bait with a single hook; and 
(b) Release brook trout.
(27) Ellkorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.
(28) Elmore Davis Lake.
(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(29) Fishtrap Lake.
(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.
(30) Game Farm Lakes.
(a) A person shall not possess shad or use shad for bait.
(b) Upper Game Farm Lake.
1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6); and 2. Channel catfish: daily limit, four (4); possession limit, eight (8).
(c) Lower Game Farm Lakes.
1. A person thirteen (13) years or older shall not fish, and 2. Daily limit, three (3) fish of any species.
(31) [63] Golden Pond at the Visitors’ Center at Land Between the Lakes. Channel catfish: daily limit, five (5) fish; possession limit, ten (10) fish; size limit, fifteen (15) inches.
(33) [68] Grayson Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Greenbo Lake.
(a) A person shall not possess shad or use shad for bait.
(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.
(b) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) inches.
(c) Sauger: size limit, fourteen (14) inches.
(38) [69] Kincaid Lake; channel catfish: size limit, twelve (12) inches.
(39) [40] Laurel River Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit shall be eighteen (18) inches.
(c) Crappie: size limit, nine (9) Inches; possession limit, thirty (30) fish.
(40) [44] Lebanon City Lake (Fagan Branch). Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
(41) [42] Leary Lake.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass: daily limit, three (3); possession limit, six (6).
(c) Bluegill: daily limit, fifteen (15), possession limit, thirty (30).
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).
(42) [43] Lincoln Homestead Lake.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.
(c) Channel catfish: daily limit, four (4); possession limit, eight (8).

(d) A person shall not possess shad or use shad for bait.

(43) Lake Malone.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(44) Marion County Lakes.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(45) Mauzy Lake, Largemouth bass; no size limit.

(46) McNeely Lake. A person shall not possess shad or use shad for bait.

(47) Mill Creek Lake, In Powell County.

(a) Largemouth bass, size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6) fish.

(b) A person shall not possess shad or use shad for bait.

(48) Nolin River Lake, whose impoundment extends up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(49) Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.

(50) Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge. Trout: size limit, sixteen (16) inches; daily limit one (1) fish; artificial bait only.

(51) Paintsville Lake.

(a) Largemouth bass: slot limit, twelve (12) to fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(52) Parched Corn Creek, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook.

(b) Release brook trout.

(53) Peabody Wildlife Management Area, for Goose Lake, Island Lake or South Lake.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Bluegill: daily and possession limit, fifteen (15).

(c) Redbreast sunfish: daily and possession limit, fifteen (15).

(d) Channel catfish: daily limit, four (4); possession limit, eight (8).

(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).

(f) A person shall not:

1. Fish:
   a. Except during daylight hours; and
   b. From October 15 through March 15; or
2. Take frogs.

(54) Pennyville Lake: largemouth bass, size limit, twelve (12) to fifteen (15) inches protective slot limit.

(55) Pikeville City Lake: Catch and release largemouth bass fishing (no harvest).

(56) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(57) Lake Reba.

(a) Largemouth and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).

(b) A person shall not possess shad or use shad for bait.

(58) Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).

(59) Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be seasonal catch and release for trout season from October 1 - March 31.

(2) A person shall use artificial bait and release trout.

(3) The following streams shall be open to the seasonal catch and release for trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Fork from mouth upstream to 190 Bridge in Bell County;

(g) East Fork Clarke River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;

(h) East Fork of Indian Creek in Menifee County;

(i) Elk Springs Creek in Wayne County;

(j) Latt Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Lick Creek in Simpson County;

(l) Middle Fork Red River in Natural Bridge State Park in Powell County;

(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and

(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.

(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolfe County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, 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 shall 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7105, ext. 441, fax (502) 564-6506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the size limits of and daily possession limits for fish that can be taken from Kentucky waters.
(b) The necessity of the administrative regulation: To effectively manage the fish populations of Kentucky.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to establish fishing guidelines to protect fish species from overharvest. This administrative regulation is necessary to establish fish size limits, daily catch limits, and field possession limits for fishing.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by eliminating the practice of culling and chumming while fishing for trout in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle. This will help protect trout from overharvest and eliminate mortality of trout associated with culling of trout. In addition, a 9-inch size limit will be established on crappie in Buckhorn Lake to create a higher quality crappie fishery.
(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: Chumming and culling of trout in the Cumberland River below Wolf Creek Dam including the Hatchery Creek and all other tributaries upstream to the first riffle will now be illegal. At Buckhorn Lake the size limit on crappie will change from a no size limit regulation to a 9-inch minimum length limit.
(b) The necessity of the amendment to this administrative regulation: To effectively manage the fishery resources of Kentucky. For example, the elimination of the practice of culling will reduce mortality of trout that occurs when a trout already in possession is released and is replaced with another fish. The nine-inch size limit on crappie at Buckhorn Lake will reduce overharvest of small fish and result in increased numbers of larger sized fish for anglers to harvest.
(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected. All people fishing for trout in the Cumberland River below Wolf Creek Dam and those fishing for crappie in Buckhorn Lake will be affected.
(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: Anglers will be minimally affected. The amendments to this administrative regulation will not affect Kentucky anglers negatively. Recent angler attitude surveys indicate public support for all amendments. These changes will result in a better allocation of the fishery resources and increases in the quality of the sport fisheries.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will not be additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no cost on a continuing basis 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 will fund the administrative and distributional cost while the 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 any other fees or to increase 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 will be established.
(9) TIERING: Is tiering applied? Tiering was not used because all people in the Commonwealth will be treated the same.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(000)
301 KAR 2:050. Land Between the Lakes hunting requirements.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.250, 150.390, 150.640, 150.680
STATUTORY AUTHORITY: KRS 150.025, 150.680
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680. This administrative regulation is necessary to specify special hunting rules at Land Between the Lakes and to authorize conservation officers to enforce Land Between the Lakes hunting rules.

Section 1. License Requirements. (1) Hunters shall have:
(a) A Land Between the Lakes hunting permit; and
(b) Unless exempted by KRS 150.170(3) through (7) (i)(a), a valid Kentucky hunting license.
(2) Permits are nontransferable and may be cancelled if rules and administrative regulations are violated or if the holder is careless with firearms.
(3) Permits may be obtained at any information station or at the Administrative Office, Golden Pond, Kentucky 42211, or through any KDSS agent.
(4) Unless exempted by KRS 150.170(3) through (7) (i)(a):
(a) Deer hunters shall possess a valid Kentucky deer tag.
(b) Turkey hunters shall possess a valid Kentucky turkey tag.

Section 2. General Requirements. (1) Except as noted, state and federal regulations shall apply.
(2) Persons shall not:
(a) Take or molest wildlife except as authorized.
(b) Target practice except at designated ranges and with Land Between the Lakes approval.
(c) Operate motorized vehicles except within the designated off-highway vehicle area and on Land Between the Lakes legal roads as designated by signs and listed on a map available free of charge from Land Between the Lakes.
(d) Drive in woods, fields, foot trails, or utility rights of way; or
(e) Block access to roads, trails, or entryways.

Section 3. Firearms, Crossbows, and Archery Equipment. (1) Persons shall not:
(a) Carry handguns on their person except during legal hunting hours while participating in authorized gun hunts.
(b) Carry firearms, crossbows, or bows and arrows, except target and fishing arrows, except during authorized hunts by legally licensed and permitted hunters.
(c) Transport in vehicles firearms with ammunition in either the chamber or magazine.
(2) Hunters camping on Land Between the Lakes may possess legal hunting firearms, crossbows, or archery equipment on (1) day prior to, during, and one (1) day after an authorized hunt.
(3) Firearms, crossbows, and archery equipment shall conform to applicable administrative regulations for the species being hunted.

Section 4. Hunting and Chasing. (1) Persons shall not hunt in developed public areas, safety zones or posted areas unless the area is designated by signs as open to hunting.
(2) A state permit shall be required to conduct a field trial.
(3) Between sunrise and sunset, persons shall not:
(a) Hunt raccoon or opossum; or
(b) Chase foxes with dogs.
(4) Raccoons may be bagged or taken for restocking.
(5) Dogs shall be removed by 8 a.m.
(6) Persons participating in deer quota hunts:
(a) Shall be selected for each hunt by computerized drawing.
(b) Shall not submit more than one (1) application.
(c) If under sixteen (16) years old, shall apply with an adult unless participating in a youth quota hunt.
(d) Shall not hunt except on dates assigned to them.
(e) Shall not change hunt dates.
(f) Shall remain in assigned areas.
(g) Shall take the sex of deer specified on the permit.

Section 5. Tree Stands. (1) Nails, spikes, tree climbers, screw-in devices, or wire shall not be used for attaching stands or for climbing trees.
(2) Existing permanent stands shall not be used.
(3) Portable stands and climbing devices that do not injure trees may be used.
(4) Portable stands:
(a) Shall not be placed on trees more than two (2) weeks prior to the hunting season.
(b) Shall be removed within one (1) week following a hunting season or portion of a split season.
(c) Shall display the name and address of the owner.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: Pertains to general rules for hunting on the Kentucky portion of the Land Between The Lakes.
(b) The necessity of the administrative regulation: To specify special hunting rules at Land Between The Lakes and to authorize conservation officers to enforce Land Between The Lakes hunting rules.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing wildlife. This administrative regulation establishes hunting permit and licensing requirements, prescribes legal weapons and equipment use, and describes how applicants are selected for and are to participate in quota deer hunts at the Land Between The Lakes.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing guidelines for effectively managing hunters using Land Between The Lakes and establishing guidelines to ensure safe and orderly hunting practices on Land Between The Lakes.
(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 allows crossbows to be used for hunting on Land Between The Lakes.
(b) The necessity of the amendment to this administrative regulation: Allowing crossbows to be used on this site will provide hunters with additional hunting opportunity with little to no expected impact on the resource.
(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 statute: See "(c)" above.
(e) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who wish to hunt on the Land Between The Lakes
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons who hunt on Land Between The Lakes will be minimally impacted by these changes and mostly in a positive way due to the increased amount of opportunity provided.
(5) Provide an estimate of how much it will cost to implement 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 already oversees wildlife programs, and the Law Enforcement Division 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.
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(8) State whether or not this administrative regulation establishes any fees directly or indirectly increased any fees; No fees.
(9) TIERING: Is tieng applied? Tieng was not used because all persons who hunt at Land Between The Lakes are required to abide by these rules.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:111. Deer and turkey hunting on special areas.

RELATES TO: KRS 150.025(1), 150.170, 150.370, 150.390
STATUTORY AUTHORITY: KRS 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations relating to game and fish, including seasons and limits and designates areas where boating and fishing are permitted. This administrative regulation establishes deer and turkey hunting season frameworks and hunting procedures on federal areas.

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 shall apply.
(2) Except on the Daniel Boone National Forest, the Jefferson National Forest and the Big South Fork National River and Recreation Area, on the areas listed in this administrative regulation, a hunter shall:
(a) Observe a permit from the area before hunting;
(b) Not hunt deer or turkey except on assigned hunting dates;
(c) Remain in designated areas;
(d) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area;
(e) Keep the area tag attached to the deer until the carcass is processed; and
(f) Check deer at a designated check station before leaving the area.

(3) Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Ordnance Depot Activity, Reelfoot National Wildlife Refuge, Clark River National Wildlife Refuge, Ohio River Islands National Wildlife Refuge, the Daniel Boone National Forest, the Jefferson National Forest, the Big South Fork National River and Recreation Area, and the Wendell H. Ford Regional Training Center may allow firearm, crossbow, or archery hunting for antlered or antlerless deer from September 1 through January 31.

(4) Land Between the Lakes, Fort Campbell, Fort Knox and the Wendell H. Ford Training Center may permit turkey hunting up to twenty-one (21) days between the last Saturday in March and the second Saturday in May.

(5) Land Between the Lakes, Fort Campbell, Fort Knox and Wendell H. Ford Training Center may permit firearm turkey hunting between October 15 and January 31, and archery or crossbow turkey hunting form the first Saturday in September through the third Monday in January.

Use of tree stands. On a federal area, a person:
(a) Shall not use a nail, spike, screw-in device, wire or tree climber for attaching a tree stand or climbing device that does not injure a tree;
(b) May use a portable stand or climbing device that does not injure a tree;
(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day of each hunting period;
(d) Shall plainly mark the portable stand with his name and address; and
(e) Shall not use an existing permanent tree stand.

Section 2. Land Between the Lakes. (1) A person shall not take more than:
(a) Two (2) deer during archery hunts, as stipulated by the USDA Forest Service;
(b) One (1) deer during quota hunts; and
(c) One (1) turkey of either sex during deer archery season and during the spring turkey quota hunt.

(2) Quota hunters shall:
(a) Apply in advance at Land Between the Lakes; and
(b) Abide by the shooting hours of one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.
(3) A person harvesting deer or turkey shall:
(a) Check the carcass as required by the USDA Forest Service;
(b) Affix a Land Between the Lakes game check card as required by the USDA Forest Service;
(c) [Not hunt deer or turkey with crossbows and]
(d) Not use bait, feed, minerals or other attractants.

Section 3. Fort Campbell. (1) Turkey, either sex:
(a) Deer archery hunters may take turkey; and
(b) Turkeys taken at Fort Campbell shall be bonus birds.
(2) White turkey.
(a) A person may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.
(b) Statewide and post limits and tagging requirements shall not apply to white turkey.

(a) Zone 1 limits apply during the open archery hunt; and
(b) A person shall not take more than two (2) deer by firearms, only one (1) of which shall be antlered.
(2) Tagging and checking deer.
(a) A quota hunter shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.
(b) Quota hunters shall comply with the check-in requirements of Reelfoot National Wildlife Refuge.
(c) An archery hunter shall take deer using the appropriate state-wide or bonus antlerless deer permit and check harvested deer through the state telephone check system.

Section 5 Bluegrass Ordnance Depot Activity. A person shall not:
(a) Take an antlered deer whose outside antler spread is less than fifteen (15) inches, or
(b) Use bait, feed, minerals or other attractants.

Section 6. Fort Knox. (1) A person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches; and
(2) Turkeys taken at Fort Knox shall be bonus birds.

Section 7. Wendell H. Ford Regional Training Center. A person shall not:
(a) Take an antlered deer whose outside antler spread is less than fifteen (15) inches, or
(b) Use bait, feed, minerals or other attractants.

Section 8 Daniel Boone National Forest and Jefferson National Forest. A person shall not use bait, feed, minerals or other attractants.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportman's Lane, 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
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regulation by May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7103, ext. 441, fax (502) 564-0508.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of.

(a) What the administrative regulation does: Establishes the deer and turkey hunting seasons, limits, and legal equipment under which deer and turkey may be taken on federal, state, and other special areas.

(b) The necessity of the administrative regulation: To establish deer and turkey hunting seasons, limits, and methods of take to control and manage populations on federal, state, and other special areas and to establish guidelines for orderly and safe harvesting of deer and turkey on these areas.

(c) How does this administrative regulation conform to the authorizing statute? KRS 150.025(1) authorizes the department to promulgate administrative regulations governing wildlife. This administrative regulation establishes hunting season dates, legal weapons, and equipment use and check-in and checkout requirements for hunting deer and turkey on special areas.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute of establishing guidelines for effectively managing the deer and turkey populations on special areas and establishing guidelines to ensure safe and orderly hunting practices on special areas.

(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 allows crossbows to be used for deer and turkey hunting on Land Between The Lakes, Fort Campbell, Fort Knox, and the Wendell H. Ford Regional Training Center, and establishes dates when crossbow hunting can take place on these special areas.

(b) The necessity of the amendment to this administrative regulation: Allowing crossbows to be used on these 4 sites will provide hunters with additional deer and turkey hunting opportunity with little to no expected impact on the resource.

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

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

(3) List the number of individuals, businesses, organizations or state and local governments that will be affected: Persons who wish to hunt deer or turkey on four special areas within 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: Persons who deer or turkey hunt on Land Between The Lakes, Fort Campbell, Fort Knox, and the Wendell H. Ford Regional Training Center will be minimally impacted by these changes and mostly in a positive way due to the increased amount of opportunity provided.

(5) Provide an estimate of how much it will cost to implement 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 already oversees the deer and turkey programs, and the Law Enforcement Division 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.

(b) 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 who hunt deer or turkey on federal or special areas are required to abide by these seasons and guidelines.

COMMERCIAL CABINET

Department of Fish and Wildlife Resources

(Commissioner)

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 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 protuding above the hairline.

(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(4) "Elk" means a member of the species Cervus elaphus.

(5) "[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, managed for reduced hunting pressure, and elk-hunting access is limited or restricted to specifically drawn and designated hunters. The limited entry areas are the Bigelis/Redbird Limited Entry Area or the Starfish Limited Entry Area, each of whose boundaries are described in Section 4(4) of this administrative regulation.

(6) "[6] "Restoration area" means the Kentucky counties east of and including, Clay, Perry, Breathitt, Magoffin, Johnson, McCreary, Martin, and Whitey.

(7) "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.

(8) "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 depreating 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.


(1) A person may apply for the [a] quota elk hunt [permit] December 1 - July 31.
(2) A person may apply for the elk quota hunt [by-purchasing an elk-hunt-drawing-permit] by visiting the department's Web site at fw.ky.gov, calling [BasePro-ek] 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.
(3) [Elk hunt-drawing-permit 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. Purchase made after July 31 shall not be eligible for or entered into the hunt drawing.
   (4) An applicant may apply once. Duplicate applications shall result in disqualification.
(5) (a) The commissioner may:
   (i) 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.
(6) (a) There shall be no preference points.
   (b) There shall be a random electronic drawing.
(7) (a) The drawing and complete results shall be posted on the department's Web site by August 20 of the application year.
   (b) 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.
(8) [There shall be a drawing for 200 regular drawing (402) tags shall be awarded consisting of sixty (60) fifty-fives (55) entered and 140 fifty-fives (55) antlerless (30) tags shall be special commission permits. Additional either-sex landowner cooperators permits will be issued with approval of the commission.
   (9) Two (2) tags, one (1) bull and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular season, beginning in 2007.
(a) Persons fifteen (15) years old or younger, at the time of application, shall be eligible to enter the special youth hunt. Those not drawn for the special youth tags shall automatically be entered into the regular draw.
(b) The application period for the special youth draw shall be the same as that for the regular elk hunt.
(c) The fee for entry in the special youth draw shall be ten (10) dollars.
(d) The special youth hunt shall be valid for the zone at large area during seasons as set forth in Section 5 of this administrative regulation.
(e) Special youth tags shall not be valid for use in limited entry areas except on land owned by the youth's parent or guardian as described in Section 4 of this administrative regulation.
(f) A resident elk tag shall cost thirty (30) twenty-five (25) dollars.
(g) A nonresident elk tag shall cost $365 [3300].
(h) A maximum of ten (10) percent of all regular tags shall be randomly awarded to nonresidents.

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 cooperators 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 cooperators 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, except that a hunter who owns land in a limited entry area and who is drawn for an at-large elk tag may hunt on his/her land during at-large seasons as defined in Section 5 of this administrative regulation.
(4) The limited entry areas shall be designated as follows:
(a) Begley/Redbird Limited Entry Area: starting at the intersection of Kentucky Route 2038 and Route 276, in the community of Begley, Kentucky, and proceeding south along Route 421 to the intersection of Route 421 and Route 221. The boundary then proceeds west along Route 221 to the intersection of Route 221 and Route 66. The boundary then goes north following Route 66 to the intersection of Route 66 and Route 1550, then east along Route 1550 to the intersection of Route 1550 and Route 1780 at Warrior Branch. The boundary then proceeds south on Route 1780 to intersection of Route 2059 near Spruce Pine, then east on Route 2059 back to Route 421 at Hatton [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 proceeds north following Route 66 to the intersection of Route 66 and Highway 421/Routes 42/80. The boundary then proceeds east along the Hal Rogers Parkway 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 476 and Route 80 near Hazard, Kentucky. The boundary then turns east along Route 476 to the intersection of Route 476 and Route 80, then east on Route 80 to [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) A maximum of six (6) tags for antlered elk shall be assigned to each limited entry area.

Section 5. Seasons for Annual Quota Elk Hunts. (1) There shall be three (3) [two (2)-one (1)-week] 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 second [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) There shall be a quota hunt beginning the second Saturday in December, for fourteen (14) consecutive days for antlerless elk in the restoration zone at-large.
(d) An either-sex archery season for zone-at-large permit holders shall be held from 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 crossbow used to hunt elk must have a barrel length of at least six (6) inches, have a bore diameter of 0.270 inches (270 caliber) or greater, and when fired, the bullet must produce at least 550 ft/lbs of energy at 100 yards.
(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 cooperators 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;
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(e) [A-handgun;]
(f) [Rimfire ammunition;]
(f) [A fully-automatic firearm;]
(g) [A firearm with a magazine capacity greater than ten (10) rounds;]
(h) [Steel jacketed ammunition;]
(i) [A tracer bullet ammunition;]
(j) [A shotgun shell containing more than one (1) projectile;]
(k) [A broadhead smaller than seven-eighths (7/8) inch wide;]
(l) [A barbed broadhead;]
(m) [A crossbow without a working safety device;]
(n) [A chemically-treated arrow; or]
(o) [An arrow with a chemical attachment;]
(p) [Hunter orange;]
(q) [During the firearm elk season, all hunters hunting within the sixteen (16) county elk restoration zone 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).]
(r) [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.]
(d) [Hunter requirements;]
(e) [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.]
(f) [An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.]
(g) [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 or electronic decoys; 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) Before removing the carcass from the field (After-harvest), limited entry area hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log. Limited entry area hunters are also required to check out at the locations listed in subparagraphs 1 and 2 of this paragraph.
(e) Before removing the carcass from the field (After-harvest), zone-at-large hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log.

Section 6. Elk Hunting on Public Land. (1) An individual who has 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 National 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 pursuant to Sections 4 and 5 of this administrative regulation.
(3) Public land that lies within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.
(4) Portions of Parnts Lake WMA lie outside the sixteen (16) county elk restoration zone and are subject to the requirements established in Section 8 of this administrative regulation.
(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(s) each [permit-per] year of the agreement to qualified landowners or lessees who enter into a five (5) year public hunting and access agreement with the department.

(2) To qualify, landowners or lessees shall own or lease 5,000 acres of [protected] elk habitat to which he or she, and the lessee, if applicable, 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 [protected] land included in the agreement.

(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 seasons, legal methods of take and other elk hunting requirements.

(a) Landowner cooperator land that resides within a limited entry area shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

(b) Landowner cooperator land that resides within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

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

(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 during the 2006-2007 season, a hunter must be a legal deer hunter and have purchased a ten (10) dollar 2006 elk-hunting permit. Elk hunting 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 5 of this administrative regulation. Purchases made after July 31 shall not be eligible for or entered into the Hunt Drawing. Beginning March 1, 2007, out-of-zone permits shall be available for the 2007 season and shall be thirty (30) dollars for residents and $365 for nonresidents.
(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
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 100 to 200, increases the number of days in the et-large cow hunt, and expands the "landowner cooper- orator permit" to include cooperators who enroll large tracts of leased land. 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. The amendment expands telecheck requirements to all harvested elk. The amendment increases fees and places a cap on the number of nonresidents who may be drawn for the elk quota hunt.

(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, particularly on the female segment of the herd. To effectively manage greater numbers of elk hunters, access to public land should be expanded. By including lessees as eligible for a landowner cooperator permit, additional public access opportunities to private lands are created.

(c) How does the amendment conform to the authorizing statute: See "C" above.

(d) How the amendment will assist in the effective administration of the statute: See "D" above.

(e) 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 affected as chances for being drawn increase as the number of tags increased from 100 to 200. 16,500 persons applied for the 2005 quota elk hunt. Persons who own or lease land over 5,000 acres who enter into an agreement with the department for public hunting access may receive an elk tag.

(f) Provide an assessment of whether 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 100 to 200. Persons who own or lease 5,000 or more acres will be affected positively as they may receive an elk tag if they agree to allow public hunting on their lands.

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 oversees 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 draws.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will raise the price for elk tags and creates a new out-of-zone permit. These additional funds will be used for elk herd management, however additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk quota hunts already exists (see "6" above).

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This regulation increases the fee for out-of-zone elk permits from $10 to $30 for residents and $365 for non-residents. It also increases the fee for daily elk tags from $25 to $30 for residents and increases the fee for non-residents from $300 to $365.

(9) TIERING: Is tiering applied? Tiering was used in the sense that the fee for resident permit and elk tags are less than the fees
for a nonresident. In addition, a maximum of 10 percent of all regular tags will be randomly awarded to non-residents, thus placing a cap on the number of non-resident tags to be awarded. Pub L. 109-13, passed by the U.S. Congress states: "It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing." Otherwise, tiering was not used because all persons wishing to harvest elk, mitigate property damage caused by elk, or participate in the landowners cooperative permit program will be treated the same.

COMMERCIAL CABINET
Department of Fish and Wildlife Resources (Amendment)


RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.350, 150.370, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) requires the department to promulgate administrative regulations governing places where the taking of wildlife is permitted. This administrative regulation establishes zones within the state for the purposes of controlling deer harvest and populations, and providing optimum opportunity for deer hunters.

Section 1. Definitions. "Zone" means an area consisting of counties designated by the department to establish deer hunting season dates and limits for the management and conservation of deer in Kentucky.

Section 2. Zone Assignments. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Butler, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Harrison, Henry, Hickman, Jefferson, Kenton, Livingston, Lyon, Marion, Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Taylor, Trigg, Trimble, Washington, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bourbon, Boyd, Boyle, Breathitt, Butler, Caldwell, Carter, Campbell, Davies, Edmonson, Fayette, Fleming, Grayson, Green, Greenup, Hancock, Hardin, Hart, Hopkins, Jessamine, Lincoln, Lawrence, Lewis, Logan, Madison, McLean, Meade, Mercer, Metcalfe, Monroe, Muhlenberg, Nicholas, Ohio, Rowan, Simpson, Todd, Union, Warren, and Webster Counties.

(3) Zone 3 shall consist of Bath, Clark, Clinton, Edmonson, Elliott, Estill, Garrard, [Greene, Hart], Jackson, Johnson, Knox, Laurel, Lee, Lexington, Madison, Martin, Menifee, Montgomery, Morgan, Powell, Rockcastle, Russell, Shelby, Whitley, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Bledsoe, Clay, Floyd, Harlan, Knott, Leslie, Letcher, Magoffin, McCreary, Owsley, Perry, Pike, Pulaski, and Wayne Counties.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary

APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person, Rose Mack

1. Provide a brief summary of:
   (a) What the administrative regulation does: establishes the deer hunting zones in the Commonwealth.
   (b) The necessity of the administrative regulation: To establish deer hunting zones for the effective management of the deer population.
   (c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing deer 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. Administrative regulation governing deer hunting will supplement the statute by establishing deer zones. The establishment of deer zones is essential to managing the deer population.

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 changes Edmonson, Grayson, and Hart Counties from a Zone 3 to a Zone 2 designation.
   (b) The necessity of the amendment to this administrative regulation: To place Edmonson, Grayson, and Hart Counties in a more liberal zone to encourage a greater amount of harvest in order to maintain deer numbers at present levels.
   (c) How does the amendment conform to the authorizing statutes: See (c) above.
   (d) How the amendment will assist in the effective administration of the statutes: See (d) above.

3. List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Deer hunters hunting in Edmonson, Grayson, and Hart Counties will be moderately affected.

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: Deer hunters hunting in Edmonson, Grayson, and Hart Counties will have 6 additional days of firearm deer hunting, and will now be allowed to harvest 4 deer with a modern firearm. This increases the opportunity to harvest a deer in Edmonson, Grayson, and Hart Counties. This change was brought about by input from Edmonson, Grayson, and Hart County hunters.

5. Provide an estimate of how much it will cost to implement 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 already oversees the deer program and the Law Enforcement Division 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 estab-
lishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used because all counties are assigned a zone.

COMMERCIAL CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:176. Deer control tags.

RELATES TO: KRS 150.010, 150.105, 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.105 allows the commissioner to authorize the destruction of wildlife that is causing damage. KRS 150.025 authorizes the department to promulgate administrative regulations regulating the taking of wildlife. This administrative regulation establishes the procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons.

Section 1. Definitions. (1) "Damage to wildlife habitat" means:
(a) The existence of a browse line caused by deer, or
(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.
(2) "Deer control tag" means a tag issued by the department which authorizes a hunter to take antlerless deer during an open deer season.
(3) "Deer destruction permit" means written authorization from the department, pursuant to KRS 150.105, to take deer outside the regular hunting season framework.
(4) "Deer food plot" means a crop grown to attract and feed deer.
(5) "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.
(6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:
(a) He has permitted deer hunting on the property during the previous deer season;
(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical, and
(c) The department representative certifies deer damage to crops, gardens, property or wildlife habitat.
(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags without evidence of damage if:
(a) He has permitted deer hunting on the property during the previous deer season;
(b) According to the judgement of the department representative, regular deer seasons are inadequate to control deer populations on the property; and
(c) The landowner agrees to:
1. Follow the deer management practices recommended by the department representative; and
2. Supply the department with weight, age and condition data on deer taken from his property.
(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:
(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or
(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.
(4) A department representative whose property is immediately adjacent to property assessed by a department representative as having severe deer damage shall be issued damage control tags upon request of the landowner, even if there is no evidence of deer damage on their property.
(5) The department shall not issue deer control tags to a landowner whose only damage is to a deer food plot.

Section 3. Applying for Deer Control Tags. (1) A landowner wishing to apply for deer control tags shall contact the department through:
(a) A conservation officer;
(b) The appropriate district wildlife biologist; or
(c) The Division of Wildlife in Frankfort.
(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.
(3) A request for an assessment shall be made on or before September 30 to be eligible for current year damage control tags.
(4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.
(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:
(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or
(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.
(2) A landowner:
(a) May transfer a deer control tag to another person;
(b) Shall not issue more than five (5) deer control tags to an individual;
(c) Shall require hunters to sign a deer control tag at the time of transfer; and
(d) Shall return unissued tags to the department before January 25.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the landholding for which it was issued.
(2) A deer control tag shall expire after the license year for which it was issued.
(3) A person using a deer control tag:
(a) Shall have in his possession:
1. A deer control tag with his signature; and
2. A valid hunting license and the receipt portion of a current deer permit, unless exempt from license or permit requirements by KRS 150.170;
3. May use deer control tags during archery, crossbow, and gun or muzzle-loader seasons to take antlerless deer;
(c) Shall not take more than five (5) deer per license year with deer control tags; and
(d) Shall abide by the provisions of 301 KAR 2.172, except that he shall
1. Not take antlered deer;
2. Tag deer with the deer control tag rather than the carcass tag portion of the deer permit.
(4) Deer taken with a deer control tag shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:
(a) To a landowner:
1. Who continues to experience damage after being issued deer control tags; or
2. Whose property cannot legally be hunted; and
(b) Where deer are posing a public safety or environmental threat.
(2) A deer destruction permit shall specify:
(a) The number and sex of deer to be destroyed;
(b) The method of destruction;
(c) The name of the person who will destroy the deer; and
(d) The dates during which the destruction will take place.

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(3) A deer destruction permit shall not be issued without the recommendation of a representative of the department and the approval of the commissioner.

(4) A person destroying deer shall:
   (a) Attach a disposal tag provided by the department to each carcass;
   (b) Not remove the disposal tag until the carcass is processed or disposed of; and
   (c) If an antlered deer was taken, turn the antlers in to the department.

(5) A deer destruction permit shall not be used except as specified on the permit.

(6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke a deer control tag or destruction permit and deny a future tag or permit to a person who:
   (a) Fails to comply with the requirements of this administrative regulation;
   (b) Is convicted of a deer administrative regulation violation; or
   (c) Otherwise abuses the Deer Control Tag Program.

(2) An appeal of a revocation or denial of eligibility shall be submitted:
   (a) In writing to the commissioner; and
   (b) Within sixty (60) days of the date of the revocation or denial.

(3) An appeal of the commissioner's decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner's decision.

(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary.

FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, 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 notice 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
   (a) What the administrative regulation does: establishes a deer damage management system in the Commonwealth.
   (b) The necessity of the administrative regulation: To establish a program for the effective localized management of the deer population.
   (c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing deer hunting?
   (d) How will this administrative regulation assist in the effective administration of the statute? KRS 150.025(1) authorizes the department to promulgate administrative regulations for hunting wildlife. This administrative regulation governing deer hunting will supplement the statute by creating the management flexibility to resolve problems resulting from locally overabundant deer populations. The establishment of a deer control tag program is essential to managing the deer population.

(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.
   (b) The necessity of the amendment to this administrative regulation: To encourage a greater amount of legal antlerless harvest in order to reduce deer numbers on properties where they are inflicting habitat, crop, or property damage.
   (c) How does the amendment conform to the authorizing statutes: See "(c)" above.
   (d) How the amendment will assist in the effective administration of the statutes: See "(d)" above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Deer hunters hunting on properties whose owners have been issued deer control tags will be moderately affected.

(4) Provide an assessment of how the above groups will be impacted by the implementation of this administrative regulations. If new, or by the change if it is an amendment: Deer hunters that have been issued deer control tags by landowners will now be allowed to use them to take antlerless deer with a crossbow. This increases the opportunity for hunters to harvest multiple female deer and thereby assist in reducing deer numbers on properties where a deer harvesting program has been implemented.

(5) Provide an estimate of how much it will cost to implement 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 already oversees the deer program and the Law Enforcement Division 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 landowners in any Kentucky county are eligible to request deer control tags

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Change)


RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 authorize the department to establish hunting seasons, bag limits, methods of taking and other matters.
necessary to carry out the purpose of KRS Chapter 150 on Wildlife Management Areas. This administrative regulation establishes deer hunting seasons, application procedures and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements.

Section 1. Definitions. (1) "Bonus quota hunt deer permit" means a permit that authorizes a hunter participating in a Wildlife Management Area or state park quota hunt and who possesses a statewide deer permit to take additional deer during a quota hunt.

(2) "Mentor hunt" means a quota youth hunt in which the adult accompanying the youth is eligible to take a deer.

(3) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer.

(4) "Private inholding" means privately-owned property completely surrounded by a Wildlife Management Area.

(5) "Quota hunt" means a Wildlife Management Area deer hunt, including a youth quota hunt, where a participant is selected by a random drawing.

(6) "Quota youth hunt" means an adult- accompanied hunt in which only persons under age sixteen (16) are eligible to apply and to take deer.

(7) "Statewide deer requirements" mean the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 301 KAR 2:174.

(8) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(9) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to a WMA.

(2) Unless otherwise specified in Section 6 of this administrative regulation, a WMA in two (2) or more deer hunting zones as specified in 301 KAR 2:174 shall be governed by the most liberal requirements of the zones in which it lies.

(3) Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery requirements established in 301 KAR 2:172, Section 5(1), unless otherwise noted.

(4) An open firearm deer hunt:

(a) Shall be the third Wednesday in January for ten (10) consecutive days;

(b) Shall be limited to United States Armed Forces and National Guard veterans who are residents of Kentucky, or nonresidents stationed in Kentucky, and who were deployed out-of-country during any portion of the most recent regular statewide deer season; and

(c) Participants must follow statewide deer requirements and hunt only on WMAs designated as open for this special hunt.

(5) [49] On a WMA and Meade-Westvaco Public Hunting Area, a person:

(a) Shall not use a nail, spike, screw-in device, wire or tree climber for attaching a tree stand or climbing a tree;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;

(d) Shall plainly mark the portable stand with his name and address; and

(e) Shall not use an existing permanent tree stand.

(6) [44] The owner of a private inhaling or his guest:

(a) May hunt on the owner’s lands without application; and

(b) Shall follow all other requirements for the WMA which surrounds the inhaling.

(7) [66] A person shall not hunt on a private inhaling when deer hunting is not allowed on the surrounding WMA.

(8) [66] A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign;

(b) To accompany a youth hunting in a youth quota or mentor hunt;

(c) To accompany a movement-impared hunter that was drawn to hunt. Only one (1) assistant shall be allowed and the assistant shall not be required to have applied for the quota hunt.

(9) [37] Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress.

(10) [66] A person shall not place, distribute or hunt over bait as prohibited in 301 KAR 3:010.

Section 3. General Quota Hunt Procedures. (1) A person who is not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(2) A random selection of those with preference points shall be made for each year’s quota hunts before those without preference points are chosen.

(3) Each applicant’s preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.

(4) Youth hunters may apply for one (1) youth quota hunt and one (1) general quota hunt.

(5) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(6) Unless otherwise specified in Section 6 of this administrative regulation, a WMA in two (2) or more deer hunting zones as specified in 301 KAR 2:174 shall be governed by the most liberal requirements of the zones in which it lies.

(7) [90] Bonus quota deer hunt permits shall only be used for quota hunts. Deer taken with these permits do not count toward the statewide total deer limit.

(8) [90] There shall be one (1) person drawn from the eligible applicants to the quota hunts who were not selected in the original drawing. This person shall receive one (1) deer permit which carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide from a touch-tone phone between September 1 and September 30;

(2) Enter his Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a youth hunting in a youth quota or mentor hunt.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt, including adult guardians accompanying youth hunters on quota youth and mentor hunts, shall:

(1) Check-in and show his Social Security number;

(2) Possess an annual Kentucky hunting license, except:

(a) A person on military furlough for more than three (3) days who shall show his military identification and status instead of a license, or
(b) If not dear hunting.
(3) Show proof of purchasing a current statewide deer permit;
(4) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;
(5) Possess an unused bonus deer permit, if he has already taken the two deer authorized by possession of the statewide deer permit;
(6) Not be required to possess a deer permit if he possesses and presents a senior/disabled combination hunting and fishing license at time of check-in;
(7) Hunt on assigned date and in assigned areas selected by random drawing of applicants when necessary;
(8) Comply with hunting equipment restrictions specified by the type of hunt;
(9) Check in from noon to 8 p.m. local time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern time on the day of the hunt, except as otherwise specified in this administrative regulation;
(10) Except as otherwise specified in this administrative regulation, check deer daily at the designated WMA check station and check out:
(a) When finished hunting;
(b) When the hunter's bag limit is reached; or
(c) By 8 p.m. Eastern time on the final day of the hunt;
(11) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and
(12) Comply with all quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for a quota hunt the following year.

Section 6. WMA Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide deer requirements.
(2) Ballard WMA.
(a) The youth quota hunt shall be for any deer or antlerless deer as determined by a random drawing, and shall be for two (2) consecutive days beginning the fourth Saturday in October.
(b) The quota hunt shall be for any deer or antlerless deer as determined by a random drawing, for two (2) consecutive days beginning on the first Saturday in November.
(c) This area shall be closed to the statewide archery season.
(d) The crossbow modern firearm, youth firearm season and muzzleloader seasons shall be open under statewide deer requirements only on the 400 acre tract south of Sallie Cross Road.
(3) Barren River WMA.
(a) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:
1. shall not hunt deer with a breech-loading firearm; and
2. May hunt deer with a crossbow
(b) The youth firearm season shall be open under statewide deer requirements.
(c) The crossbow modern firearm, and muzzleloader seasons shall be open under statewide deer requirements with equipment restrictions as noted in paragraph (a) of this subsection.
(4) Beaver Creek WMA. The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
(a) The limit shall be one (1) deer during the quota hunt.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(5) Bothwell WMA.
(a) On the Swan Lake Unit, the archery season shall be open under statewide deer requirements through October 14 and the October youth deer season shall be open under statewide deer requirements; and
(b) On the Peal Unit and Olmstead Unit, the crossbow youth firearm, modern firearm and muzzleloader seasons shall be open under statewide deer requirements.
(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide deer requirements.
(7) Central Kentucky WMA. The archery hunt shall be for any deer:
(a) On Wednesdays, between the second week in September through December 17, except during scheduled field trials as posted on the area bulletin board; and
(b) December 18 through the third Monday in January.
(8) Clay WMA.
(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide deer requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.
(b) On the Marietta Booth Tract, the youth firearm seasons shall be open under statewide deer requirements.
(c) The quota hunt shall be for any deer and shall be for two (2) consecutive days beginning the first Saturday in November.
(9) Dewey Lake WMA.
(a) The archery and youth firearm season shall be open under statewide deer requirements for antlered deer only.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(10) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide deer requirements.
(11) Fishtrap Lake WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning on the Saturday before Thanksgiving. The limit shall be one (1) deer.
(b) The youth firearm season shall be open under statewide deer requirements.
(12) Grayson Lake WMA.
(a) An open youth hunt shall.
1. Be the first Saturday in November for two (2) consecutive days;
2. Be limited to [the first-hunt] youth hunters age 15 and under;
3. Require check-in from noon to 8 p.m. Eastern Time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern Time on hunt days;
4. Check-out as follows:
   a. When finished hunting;
   b. When the hunter's bag limit is reached; or
   c. By 8 p.m. Eastern Time on the final day of the hunt.
5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;
(b) Have bonus deer permits apply; and
(c) Except to travel through Grayson Lake WMA on an established public road or to use an area designated open by a sign, a person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt.
(b) The property of Camp Webb shall be open for a mobility-impaired deer [neu] hunting event during the October youth [quota] hunt as established in 301 KAR 3:110.
(c) The crossbow hunt shall be for any deer from the first Saturday in September through the third Monday in January, except during the November open youth [quota] hunt.
(d) The statewide youth firearm season shall be open under statewide deer requirements.
(13) Green River Lake WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(c) For the purposes of check-in and check-out times, the Green River Lake WMA shall be considered to be located in the Eastern Time Zone.
(14) Higginson-Heny WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in December.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(15) J.C. Williams WMA. The crossbow season shall be open under statewide deer requirements.
(16) Kentucky River WMA. The crossbow season shall be open under statewide deer requirements.
(17) Klober WMA.
(a) The crossbow season shall be open under statewide deer requirements, except during a quota hunt.
(b) The quota hunt shall be for any deer as follows:
1. The first quota hunt shall be for two (2) consecutive days beginning the first Saturday in November, and
2. The second quota hunt shall be for two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open under statewide deer requirements.

(18) Lake Barkley WMA. Open under statewide requirements for deer except that the North Refuge is closed from November 1 to February 15 and Duck Island is closed from October 15 to March 15.

(19) Lewis County WMA.
(a) The modern firearm and youth firearm seasons shall be open under statewide deer requirements, except that the use of centerfire rifles and handguns shall be prohibited.
(b) The muzzeloader season shall be open as follows:
1. The October season shall be open under statewide requirements; and
2. In the December season, only archery and crossbow equipment shall be permitted.
(c) The crossbow season shall be open under statewide deer requirements.

(20) Livingston County WMA. The crossbow, youth firearm, muzzelodear, and modern firearm seasons shall be open under statewide deer requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season as specified in 301 KAR 2:172.

(21) Curts Gates Lloyd WMA. The crossbow season shall be open under statewide deer requirements.

(22) (631) Maceo-Westvacco public hunting areas. Statewide deer requirements shall apply. In addition, a person hunting on Maceo-Westvacco property:
(a) Shall possess a Meade-Westvacco Hunting Permit;
(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line; and
(c) The portion of the area south of Westvacco Road shall be open to archery deer hunting through October 31 and closed to public access between November 1 and March 15. The area shall be open for the statewide October youth firearm season and early muzzelodear weekend.

(23) (629) Mill Creek WMA. The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November. The limit shall be one (1) deer.

(24) (633) Mud Camp Creek WMA. The crossbow youth firearm, and muzzelodear seasons shall be open under statewide deer requirements.

(25) (641) Mullins WMA. The crossbow season shall be open under statewide deer requirements.

(26) (655) Ohio River Islands WMA. On the Stewart Island Unit:
(a) The muzzelodear season shall be for any deer for two (2) days beginning the third Saturday in October.
(b) The archery season shall be for any deer from the first Saturday in September through October 14.
(c) The October youth season shall be open under statewide deer requirements.

(27) (656) Paintsville Lake WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
(b) The youth firearm season shall be open under statewide deer requirements.

(c) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(28) (657) Peabody WMA.
(a) The crossbow, youth firearms and muzzelodear seasons shall be open under statewide deer requirements.
(b) The modern firearm season shall be open under statewide deer requirements for ten (10) consecutive days beginning the second Saturday in November.

(29) (688) Pennington State Forest-Tradewater WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(30) [29] Pioneer Weapo WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a breech-loading gun or any other type of modern firearm;
(b) Shall not use an in-line muzzeloading gun;
(c) Shall not use a scope or optical enhancement; and
(d) May use a crossbow during the entire archery season.

(31) (699) Dr. James R. Rich WMA.
(a) The crossbow season shall be open under statewide deer requirements, except during a quota hunt.
(b) The quota hunts shall be for any deer as follows:
1. The first quota hunt shall be for two (2) consecutive days beginning the first Saturday in November; and
2. The second quota hunt shall be for two (2) consecutive days beginning the first Saturday in December.
(c) The youth firearm season shall be open under statewide deer requirements.

(32) (614) Sloughs WMA.
(a) On the Sauerbeber Unit, the archery, muzzelodear and youth firearm seasons shall be open under statewide deer requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide deer requirements through the end of modern firearm season [November-27].
(b) On the remainder of the WMA, the crossbow, modern firearm, muzzelodear and youth firearm seasons shall be open under statewide deer requirements.

(33) (629) South Shore WMA.
(a) The youth firearm, October muzzelodear and modern firearm seasons shall be open under statewide deer requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.
(b) The archery season shall be open under statewide deer requirements, except the area shall be closed November 15 through January 15.

(34) (631) Paul Van Booven and Robinson Forest WMAs.
(a) A person shall not hunt deer on the main block of Robinson Forest.
(b) The muzzelodear, modern firearm, and youth firearm seasons shall be open under statewide deer requirements, except a person shall not hunt deer with a modern gun.

(35) (634) T.N. Sullivan WMA. The crossbow season shall be open under statewide deer requirements.

(36) (641) R.F. Tarter WMA. The crossbow, youth firearm and muzzelodear seasons shall be open under statewide deer requirements.

(37) (656) Taylorsville Lake WMA.
(a) The quota hunt shall be for any deer as follows:
1. Two (2) consecutive days beginning the first Saturday in November;
2. Two (2) consecutive days beginning the first Saturday in December; and
3. Two (2) consecutive days beginning the first [second] Saturday in January.
(b) The youth firearm season shall be open under statewide deer requirements.
(c) The crossbow season shall be open under statewide deer requirements, except that it shall be closed during the quota hunt.

(38) (657) Twin Eagle WMA. The crossbow season shall be open under statewide deer requirements.

(39) (658) Twin Knobs Campground.
(a) The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3:026.
(b) The area shall be closed to the statewide archery season.

(40) (659) West Kentucky WMA.
(a) All tracts, except Tract 8A, shall be open under statewide deer requirements for the archery and crossbow seasons except that the areas shall be closed during quota and firearm deer hunts.
(b) Tracts 1-6 shall be open to shotgun and muzzelodear hunters participating in the quota and open firearm deer hunts. Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.
(c) The quota hunt shall be for any deer for two (2) consecutive days beginning the third Saturday in November.
(d) The firearms season shall:
1. Be the second Saturday after Thanksgiving for two (2) consecutive days;
2. Be limited to the first 300 hunters;
3. Require check-in from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunting days;
4. Check out as follows:
   a. When finished hunting;
   b. When the hunter's bag limit is reached; or
   c. By 7 p.m. Central time on the final day of the hunt.
5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;
6. Have bonus deer permits, and
7. Except to travel through West Kentucky WMA on an established public road or to use an area designated open by a sign, a person who has not checked-in shall not enter the West Kentucky WMA during firearm season.
(e) Firearm hunters shall not use a breech-loading rifle or breech-loading handgun.
(f) A person shall not carry a firearm in posted zones.
(g) Archery and crossbow hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts.

(41) (40) Yatesville WMA.
(a) The crossbow, modem firearm and muzzleloader seasons shall be open under statewide deer requirements except a person shall not take an antlered deer with a firearm during the modern firearm deer season.
(b) The youth firearm seasons shall be open under statewide deer requirements.

(42) (44) Yellowbank WMA.
(a) The mentor quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. There shall be no more than two (2) permits for each mentor and no more than one (1) mentor for each youth. Mentors shall not take antlered deer. Mentors may take any deer.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(43) (44) Ziplo Campground.
(a) The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 501 KAR 3.026.
(b) The area shall be closed to the statewide archery season.

MARK S. CRAMER, Deputy Commissioner
For DM, JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsmen's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0508.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the deer hunting season, limits, and legal equipment under which deer may be taken on wildlife management areas.
(b) The necessity of the administrative regulation: To establish deer hunting seasons, limits and methods of taking deer to control and manage populations on WMAs and to establish guidelines for orderly and safe harvesting of deer on these public areas.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.252(1) authorizes the department to promulgate administrative regulations governing deer. KRS 150.820 authorizes the department to manage public lands for hunting and fishing. This administrative regulation establishes hunting season dates, legal weapons, and equipment use and check-in and checkout requirements for hunting on WMAs.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing guidelines for effectively managing the deer populations on WMAs and establishing guidelines to ensure safe and orderly hunting practices on the WMAs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment eliminates the hunter quota from the November youth deer hunt at Grayson Lake WMA and also adds a mobility-impaired deer hunt on the Camp Webb portion of that area. Requires adult guides and legal permits for the hunting seasons, and eliminates the ability for mentor hunters to check-in and supply their Social Security Number (before the youth begins to hunt) and comply with all deer hunt rules or be prohibited from applying for the subsequent year's quota deer hunts, mandates daily check-in (at an on-site check station) of deer taken in WMA quota deer hunts, establishes special deer hunting regulations for a new WMA in Livingston County, creates a special WMA deer hunt for active duty military and National Guard personnel that missed all or part of the current year's deer season as a result of being deployed out-of-country, makes season date adjustments on Sloughs WMA and Taylorsville Lake WMA, and further restricts deer harvest on Dewey Lake WMA.
(b) The necessity of the amendment to this administrative regulation: Adding additional deer hunting opportunities at Grayson Lake WMA and the new Livingston County WMA, as well as for recently-retired military veterans, provides hunters with more opportunity with little to no expected impact on the resource. Requiring hunters to comply with WMA rules ensures a safe and orderly hunting environment. Date changes to WMA hunts help avoid user conflicts and potential conflicts with landowner activities. Further, extending the take of deer at Dewey Lake WMA is necessary to protect that local herd from overharvest.
(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. There are approximately 271,000 deer hunters in the Commonwealth. All persons wanting to hunt deer in wildlife management areas in Kentucky will be affected.
(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 wanting to hunt deer on WMAs will be minimally impacted by these changes and mostly in a positive way due to the increased amount of opportunity provided.
(5) Provide an estimate of how much it will cost to implement 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.
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301 KAR 2:178. State park deer hunts.

RELATES TO: KRS 148.029(5), 150.025(2), 150.105, 150.360, 150.370, 150.640(1), 150.710

STATUTORY AUTHORITY: KRS 148.029(5), 150.025(1), 150.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to permit the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wildlife to open seasons and make those seasons apply to a limited area of the state. This administrative regulation is necessary to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of the parks.

Section 1. State Park Deer Seasons. The following state parks shall be open to deer hunting as specified below:

(1) Lake Barkley State Resort Park. Deer hunting shall be permitted on the second Tuesday of January for two (2) consecutive days for any deer.

(2) Lake Cumberland State Resort Park. Archery and crossbow deer hunting shall be permitted December 24 and 25 under statewide deer requirements.

(3) Dale Hollow Lake State Resort Park. Deer hunting shall be permitted on the fourth Tuesday [Monday] of December for four (4) (five-ten) consecutive days for any deer.

(4) Greenbo Lake State Resort Park. Archery and crossbow deer hunting shall be permitted the first Saturday and Sunday of November for any deer, and the hunt shall be open to persons who have not yet reached their sixteenth birthday.

(5) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the second Tuesday of January for two (2) consecutive days for any deer.

(6) Taylorsville Lake State Park.

(a) Deer hunting shall be permitted on the first Saturday and Sunday of November at Taylorsville Lake State Park for any deer.

(b) In odd-numbered years, the November hunt shall be open to any hunter, and the December hunt shall be open to persons with a disability which impairs their mobility as defined in 301 KAR 3.026, and the December hunt shall be open to any hunter.

(d) Persons who participate in the hunt held for mobility-impaired hunters shall comply with the requirements established in 301 KAR 3.026.

(6) Deer-hunting shall be permitted on the first Saturday and Sunday of November at Taylorsville Lake State Park for any deer. This hunt is open to any hunter.

(e) Archery and crossbow deer hunting shall be permitted under statewide deer requirements on the third Friday in October for three (3) consecutive days and on the first Friday in January for three (3) consecutive days.

(7) [8] Yatesville Lake State Park.

(a) Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the second Monday of December for three (3) consecutive days.

(b) Check-in at the park campground gate is required from noon to 3 p.m. Eastern Time on December 10 [11].

(8) [9] Barren River Lake State Resort Park. Deer hunting shall be permitted on the second Tuesday of January for two (2) consecutive days for any deer.

(9) General Burmeade Island State Park.

(a) Archery and crossbow deer hunting shall be permitted on the second Thursday in December for four (4) consecutive days for any deer, and the hunt shall be open to persons who have not yet reached their sixteenth birthday.

(10) Mineral-Mound State Park. Archery and crossbow deer hunting shall be permitted on the fourth Monday of December for five (5) consecutive days.

Section 2. State Park Deer Hunt Requirements. (1) Except for the open hunts at Lake Cumberland State Resort Park, Taylorsville Lake and Yatesville Lake State Parks, a person shall not hunt on a state park unless he:

(a) Was selected by a random drawing pursuant to 301 KAR 2:178; or

(b) Is a member of the successful applicant's hunting party.

(2) Check-in and check-out requirement.

(a) A person participating in a state park hunt, except for the quota hunts at Dale Hollow Lake State Resort Park and [General Burmeade Island State Park, Mineral-Mound State Park, Green River Lake State Park, and the Lake Cumberland State Resort Park, [the] Taylorville Lake State Park, and Yatesville Lake State Park open deer hunts, shall:

1. Check in and check out as required by 301 KAR 2:178;

2. Furnish at check-in:
   a. The confirmation number as specified in 301 KAR 2:178, showing that he was a successful applicant for the hunt; and
   b. A driver's license or other form of personal identification; and

3. Check in between noon and 8 p.m. Eastern Standard Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt and check in at the park headquarters before hunting if hunting in a Taylorville Lake State Park open deer hunt.

(b) A person who does not check out as required above shall not be eligible to apply for a quota hunt the following year.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172 and 301 KAR 2:178;

(b) Check deer daily at the designated park check station, unless specified in paragraph (c) of this section.

(c) Telecheck [except] deer taken in [all] Dale Hollow Lake State Resort Park, and [General Burmeade Island State Park, Mineral-Mound State Park], Green River Lake State Park quota hunts, and in Lake Cumberland State Resort Park, Taylorville Lake State
Park, and Yatesville Lake State Park open deer hunts [shall be teleheveled] as specified in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:
(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;
(b) Hunt over bait;
(c) Injure a tree by using:
   1. A tree stand except a portable stand;
   2. Climbing devices which nail or screw to the tree; or
   3. Climbing spikes.
(d) Leave a deer stand unattended for more than twenty-four (24) hours;
(e) Discharge a firearm within 100 yards of a maintained road or building;
(f) (ee) Hunt:
   1. In an area posted as closed by signs; or
   2. Outside the park boundaries.
(5) Bonus deer permits shall apply to a state park quota deer hunt.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, 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. Anyone who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the procedures for hunting deer on state parks.
(b) The necessity of the administrative regulation: To establish deer management at state parks and equitable opportunities for people who wish to hunt deer on state park grounds.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing deer. KRS 148.029 authorizes the department to promulgate administrative regulations to effectively manage wildlife on state park grounds.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will provide for the procedure and dates for taking deer at state parks. By providing for deer hunts on state parks, the department will be managing the deer herd to control the population.
(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 will require setup and removal of deer stands no longer than 24 hours before and after deer hunts on state parks, make a calendar shift in hunting dates at Dale Hollow Lake State Resort Park and Green River Lake State Park, mandate a 15-inch outside antler spread restriction for antlered deer taken in the quota deer hunt at Green River Lake State Park, and establish a method to equitably distribute the highly coveted November quota deer hunt at Taylorsville Lake State Park between mobility-impaired and all other hunters. In accordance with landowner (i.e., the Kentucky Department of Parks) wishes, the amendment will also eliminate quota deer hunts at General Bums Island State Park, Grayson Lake State Park, Jenny Wiley State Resort Park, and Mineral Mound State Park.
(b) The necessity of the amendment to this administrative regulation: To ensure that portable deer stands are erected and removed immediately before and after state park deer hunts (i.e., thus reducing potential conflicts with other park users), accommodate calendar shift-caused changes in park holiday closure dates, standardize state park deer harvest regulations with those on an adjoining Wildlife Management Area, and evenly allocate prime November deer hunting opportunity at a state park where it is in extremely high demand. Also, to end deer hunts at parks with ongoing golf course construction or renovation, or where local park managers no longer desire them.
(c) How does the amendment conform to the authorizing statutes: See "(b)" above.
(d) How the amendment will assist in the effective administration of the statutes: See "(d)" above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who wish to deer hunt on state parks. Exact numbers are unknown.
(4) Provide an assessment of how the above groups will be impacted by either the implantation of this administrative regulation, if new, or by the change if it is an amendment: Little inconvenience of state park hunt participants is anticipated to result from the new rules on deer stand placement and removal, as most park hunters are already following something similar to them. Hunt date changes are not expected to produce any negative consequences, as the resulting dates will closely resemble those in previous years. It is thought that the imposition of antler restrictions in one park deer hunt will not yield many negative results, because deer hunters there will still be able to take antlerless deer. Also, many of those already participating in state park deer hunts do so in hopes of harvesting an older-aged buck, and implementation of an antler restriction should lead to an increase in the number of older bucks frequenting the park. Both mobility-impaired and other deer hunters will benefit from a system that insures that, every other year, they have a chance to be selected to take part in the most highly sought after state park deer hunt in Kentucky. The amendment will, however, result in the loss of recreational opportunity (i.e., deer hunting) for as many as 85 hunters at the four parks that are being withdrawn from the state park deer hunting program. It also means that those parks are foretelling the only real means of controlling their deer populations.
(5) Provide an estimate of how much it will cost to implement 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.
(c) 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 already oversees the deer program and the Law Enforcement Division already oversees the enforcement of administrative regulations.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.
(6) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(7) TIERING: Is tiering applied? Tiering was not used because this administrative regulation treats all persons who hunt deer on state parks the same.
COMMERCIAL CLOSURE
Department of Fish and Wildlife Resources
(Amendment)

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

RELATES TO: KRS 150.170, 150.175, 150.235, 150.240,
150.250, 150.485, 150.520, 150.525, 150.603, 150.650

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225,
150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225
authorizes the department to promulgate administrative regulations
establishing reasonable license fees relating to hunting, fishing,
and trapping. KRS 150.195(4)(f) requires the department to promul-
gate an administrative regulation establishing the license and
permit terms and the expiration date of licenses and permits. KRS
150.175 establishes the kinds of licenses and tags. This adminis-
trative regulation establishes fees and terms for licenses and the
expiration dates for the licenses

Section 1. Licenses, tags, and permits listed in this section
shall be valid from March 1 through the last day of February the
following year:
(1) Sport fishing licenses:
(a) Statewide annual fishing license (resident): fifteen (15)
dollars;
(b) Statewide annual fishing license (nonresident): thirty-five
(35) dollars;
(c) Joint statewide fishing license (resident): twenty-seven (27)
dollars; and
(d) Trout permit (resident or nonresident): ten (10) dollars.
(2) Commercial fishing licenses:
(a) Commercial fishing license (resident plus ten (10) resident
commercial gear tags): $125; and
(b) Commercial fishing license (nonresident plus ten (10) non-
resident commercial gear tags): $600.
(3) Commercial fishing gear tags (not to be sold singly):
(a) Commercial fishing gear tags (resident) block of 10 tags:
fifteen (15) dollars; and
(b) Commercial fishing gear tags (nonresident) block of ten
(10) tags: ninety (90) dollars.
(4) Commercial shovelnose sturgeon permit for resident and
nonresident: $500 dollars.
(5) Hunting licenses:
(a) Statewide hunting license (resident): fifteen (15) dollars;
(b) Statewide fishing license (nonresident): $115 dollars;
(c) Statewide junior hunting license (resident or nonresident):
eight (8) dollars and seventy-five (75) cents;
(d) Statewide waterfowl permit (resident or nonresident): ten
(10) dollars; and
(e) Migratory game bird permit (resident or nonresident): five
(5) dollars.
(6) Combination hunting and fishing license (resident): twenty-
two (22) dollars and fifty (50) cents.
(7) Senior/disabled combination hunting and fishing license
(resident): five (5) dollars.
(8) Trapping licenses:
(a) Trapping license (resident): seventeen (17) dollars and fifty
(50) cents;
(b) Trapping license (resident landowner/tenant): ten (10) dol-
liers; and
(c) Trapping license (nonresident): $120.
(9) Game permits:
(a) Resident quota elk hunt permit: twenty-five (25) dollars;
(b) Nonresident elk hunt permit: $300;
(c) Game permit, resident deer: twenty-five (25) dollars;
(d) Game permit, nonresident deer: fifty (50) dollars;
(e) Junior game permit, deer (resident or nonresident): fifteen
(15) dollars;
(f) Bonus antlerless deer permit (two (2) tags per permit) (resi-
dent or nonresident): twelve (12) dollars and fifty (50) cents;
(g) Bonus quota hunt deer permit (resident or nonresident): fif-
teen (15) dollars;
(h) Game permit, resident spring turkey: twenty (20) dollars;
(i) Game permit, nonresident spring turkey: fifty (50) dollars;
(j) Game permit, fall firearm resident turkey: fifteen (15) dollars;
(k) Game permit, fall firearm nonresident turkey: fifty (50)
dollars;
(l) Game permit, fall archery resident turkey: fifteen (15) dol-
liers;
(m) Game permit, fall archery nonresident turkey: fifty (50)
dollars; and
(n) Junior game permit, turkey (resident or nonresident): fifteen
(15) dollars.
(10) Peabody or Addington Enterprises-Robinson Forest Indi-
vidual permit: twelve (12) dollars and fifty (50) cents.
(11) Commercial mussel licenses:
(a) Musseling license (resident): $400;
(b) Musseling license (nonresident): $1,600;
(c) Mussel buyer's license (resident): $500; and
(d) Mussel buyer's license (nonresident): $1,600.
(12) Sportsman's license (resident) (includes resident hunting
and fishing combination, spring turkey permit, fall firearm per-
mit, archery turkey permit, trout permit, state waterfowl per-
mit and game permit for deer): eighty (80) dollars.
(13) Land Between the Lakes hunting permit: twenty (20) dol-
liers.

Section 2. Licenses, tags and permits, listed in this section
shall be valid for the calendar year in which they are issued:
(1) Live fish and bait dealer's license:
(a) Live fish and bait dealer's license (resident): fifty (50)
dollars; and
(b) Live fish and bait dealer's license (nonresident): $100.
(2) Commercial taxidermist license: $125.
(3) Commercial guide licenses:
(a) Commercial guide license (resident): $125; and
(b) Commercial guide license (nonresident): $300.
(4) Nonresident hunting preserve license (twenty (20) dollars.
(5) Shooting preserve permit: $150.
(6) Commercial fox hunting enclosure permit: $275.
(7) Dog training area permit: fifty (50) dollars [$160].
(8) Collecting permits:
(a) Educational wildlife collecting permit: ten (10) dollars; and
(b) Scientific wildlife collecting permit: $200.
(9) Nuisance wildlife control operators (NWCO) permit: $100;
(10) Food permits:
(a) Food permit for selling bobwhite quail from propagation
farms only: $150, and
(b) Retail food permit for propagated quail: five (5) dollars.
(11) Pay lake license:
(a) First two (2) acres or less: $125; and
(b) Per additional acre or part of acre: twenty (20) dollars.
(12) Commercial captive wildlife permit: $100.
(13) Commercial fish propagation permit: fifty (50) dollars.
(15) Annual wildlife transportation permit: $250; and
(16) Peabody, Starfire, or Robinson Forest Wildlife Manage-
ment Areas annual event permit: $250.

Section 3. Licenses, tags and permits listed in this section shall
be valid for three (3) years from the date of issue:
(1) Falconry permit: effective for permits with an effective be-
inning date on and after January 1, 2001, the cost shall be sev-
enty-five (75) dollars.
(2) Noncommercial captive wildlife permit: seventy-five (75)
dollars.

Section 4. Licenses, tags and permits listed in this section shall
be valid for the date or dates specified on each:
(1) Short-term licenses:
(a) One (1) day resident fishing license: six (6) dollars;
(b) Two (2) day resident fishing license: twelve (12) dollars;
(c) One (1) day nonresident fishing license: seven (7) dollars;
(d) Two (2) day nonresident fishing license: fourteen (14)
dollars;
(e) Fifteen (15) day nonresident fishing license: twenty-five (25)
dollars;
(f) Five (5) day nonresident hunting license (not valid for deer, elk or turkey hunting); thirty-two (32) dollars and fifty (50) cents; 
[and] 
(g) Three (3) day fur bearer's license: fifty (50) dollars; and 
(h) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special commercial fishing permit: $600.

(4) Commercial waterfowl hunting permit: $25.

(5) To shoot to retrieve field trial permits: 
(a) Per trial (maximum four (4) days): fifty (50) dollars; and 
(b) Single day: fifteen (15) dollars.

(6) Boat dock permits (per year): five (5) dollars.

(7) Peabody, Starfire, or Robinson Forest individual event permit: twenty-five (25) dollars.

Section 5. Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking): twenty-five (25) dollars.

(6) Captive cervid permit (per facility, per year): $100.

Section 6. The following licenses shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident) $175.

(2) Fur buyer's license (resident): seventy-five (75) dollars.

(3) Fur buyer's license (nonresident): $300.

Section 7. Captive Cervid Permits. (1) Permits for holding captive cervids issued under 301 KAR 2.083 shall be valid for one (1) year from the date of issue and shall be perpetually renewable if the holder has complied with this administrative regulation.

(3) For a captive cervid permit shall be $100 per facility. The renewal fee shall be $100.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: December 5, 2005
FILED WITH LRC: April 14, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation creates a 1-day hunting license for nonresidents to hunt game species (excluding elk, deer, and turkey).
(b) The necessity of the administrative regulation: Allows a nonresident hunter to purchase a one-day hunting license instead of a 5-day hunting license.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation establishes a license fee that supports KDFWR to meet its statutory obligations.

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 creates a new 1-day hunting license for nonresidents.
(b) The necessity of the amendment to this administrative regulation: The amendment will provide nonresident hunters more options when considering hunting in Kentucky.
(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.

List the type and number of individuals, businesses, organizations or state and local governments that will be affected: The new hunting license is for nonresident hunters. The quantity of individuals potentially utilizing the license is unknown.

(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 nonresident hunters should have a positive view of the new license. The license offers a more cost-effective opportunity for 1 or 2 days of hunting, because the 5-day license costs thirty dollars.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be minimal administrative cost associated with the implementation of this administrative regulation.

(a) Initially: There will be minimal additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be minimal 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 will provide for the implementation and enforcement of this administrative regulation. The license fee will offset some of that cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation is accompanied by an appropriate fee for implementation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: The administrative regulation creates a direct $10 fee.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies equally to all nonresident hunters.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Environmental Protection
Division of Waste Management
(Amendment)
401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 C.F.R. Part 281, 42 U.S.C. 6991c
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet
Section 1. Definitions. (1) "Aboveground release" means any UST system release to the surface of the land or to surface water. This includes, but is not limited to, UST system releases from the aboveground (above-ground) portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(2) "Actual cost" means the cost incurred by the person performing or constructing the system or structure.

(3) "Ancillary equipment" means any devices used to distribute, meter, or control the flow of regulated substances to and from a UST system, including, but not limited to, piping, fittings, flanges, valves, and pumps.

(4) "Assets" is defined by KRS 224.60-120(3).

(5) (f) "Background" means the concentration of substances consistently present in the environment, or regionally proximate to, a UST system release, but outside of the influence of the UST system release. There are two (2) types of background as follows:

(a) Natural background is the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) Ambient background is the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the UST facility (site) and at levels not attributable to activities on the property.

(6) (g) "Belowground release" means any UST system release to the subsurface of the land or to groundwater. This includes, but is not limited to, UST system releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(7) (h) "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.

(8) "Body injury and property damage" is defined by KRS 224.60-115(1).

(9) (i) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(10) (j) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems; and

(b) At a minimum, a cathodic protection tester has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(11) "Certified company" means a person certified pursuant to 401 KAR 42:315.

(12) "Certified contractor" means a person certified pursuant to 401 KAR 42:314.

(13) (k) "Change in service" means continued use of a UST system that previously stored a regulated substance to store a nonregulated substance.

(14) "Claim" is defined by KRS 224.60-115(2).

(15) (l) "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(16) (m) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purposes of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(17) (n) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(18) (o) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(19) "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and a contracting company certified pursuant to 401 KAR 42:316.

(20) (p) "Corrective action":


(b) For purposes of 401 KAR 42:011, 42:030, 42:040, 42:050, 42:060, 42:070, 42:080, 42:090, and 42:200, means those actions necessary to protect human health and the environment in the event of a UST system release. Corrective action may include remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action may also include actions necessary to monitor, assess, and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred (these assessments necessary to protect human health and the environment in the event of a release from a UST system).

(21) "Corrective action agreement" means a written agreement for reimbursement between the cabinet, the owner or operator, and the certified contractor, which applies to corrective action or interim action to be performed.

(22) (q) "Corrosion expert" means a person accredited or certified as being a corrosion expert by the National Association of Corrosion Engineers (NACE International), or a professional engineer registered by the Kentucky State Board of Registration for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(23) (r) "Dielectric material" means a material that does not conduct direct electrical current.

(24) "Donor" is defined by KRS 224.60-115(5).

(25) (s) "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.

(26) (t) "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cables.

(27) (u) "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that no more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(28) (v) "Entry level" means an amount equal to the financial responsibility the owner or operator shall establish and maintain in accordance with KRS 224.60-120.

(29) (w) "Environmentally sensitive feature" means surface waters and wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(30) (x) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.
(31) (24) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(32) (24) "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:
(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility at the site or installation of the UST system; and
(b) A continuous, physical on-site or physical or installation program has begun at the UST facility; or
2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.

(33) (24) "Facility" is defined by KRS 224.60-115(7).

(34) (24) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(35) (24) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(36) (24) "Federal regulations" is defined by KRS 224.60-115(8).

(37) "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(38) (24) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is essentially, continuous, recirculating, or intermittent flow of the tank materials during the operation of the processes. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(39) (24) "Free product" is defined by KRS 224.60-115(9).

(40) (24) "Guarantor" is defined by KRS 224.60-120(14).

(41) (24) "Gathering lines" mean pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(42) (24) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedrock, and solution conduits.

(43) (24) "Hazardous substance UST system" means a UST system that:
(a) contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or
(b) contains a mixture of this type of hazardous substance and petroleum and is not a petroleum UST system.

(44) (24) "Hazardous substance UST system" means a petroleum UST system and backfill material.

(45) (24) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(46) (24) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(47) (24) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(48) (24) "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a UST system release of a regulated substance outside the UST system.

(49) "Leak diagnostic" means a sump, well collar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(50) (24) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(51) (24) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(52) (24) "Motor fuel" is defined by KRS 224.60-115(12).

(53) (24) "Net worth" is defined by KRS 224.60-120(9).

(54) (24) "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(55) (24) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(56) (24) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(57) "Occurrence" is defined by KRS 224.60-115(13).

(58) "Off-site" [436] "Offsite" means any area beyond the Point of compliance. [property other than the underground storage tank facility.]

(59) (24) "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(60) (24) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(61) (24) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070 or 49 KAR 42:070.

(62) (24) "Owner" means:
(a) In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of a regulated substance; and
(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

(63) (24) "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(64) (24) "Permanently closed" means a UST system was:
(a) Closed prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, in accordance with applicable industry standards when closure occurred, and in a manner that prevents any future use of the UST system; and
(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 C.F.R. 280.71 through 280.74;
(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time.
(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994; or
(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time.

(1) Closed in accordance with 401 KAR 42:070 after the effective date of this administrative regulation.

(2) "Person" is defined by KRS 224.60-115(14).
(3) "Petroleum" is defined by KRS 224.60-115(15).
(4) "Petroleum storage tank" is defined by KRS 224.60-115(16).
(5) "Petroleum storage tank operator" is defined by KRS 224.60-115(17).
(6) "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(7) "Pipeline facilities" [including gathering lines] means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.
(8) "Point of compliance" means the property boundaries of the UST facility.
(9) "Preestablished fixed cost" means the cost determined by the cabinet to be reimbursed from the Petroleum Storage Tank Environmental Assurance Fund for actions taken as a result of a written directive from the cabinet or corrective action agreement.
(10) "Ranking system" means the system for determining extent of environmental harm and financial ability as established by 401 KAR 42:20.
(11) "Registration" or "register" shall have the same meaning as "notification" or "notices", as used in 40 C.F.R. Part 280 Subpart B.

(12) [668] "Regulated substance" is defined by KRS 224.60-100(2).
(13) [669] "Release" is defined by KRS 224.60-115(20).
(14) Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, or subsurface soils, or into interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance that is permitted or authorized by Kentucky or federal law.

(15) [670] "Release detection" means a method of determining whether a UST system release has occurred, from the UST system into the environment or into the interstitial space between a UST system and its secondary barrier or secondary containment.

(16) [671] "Repair" means to restore a UST system component that has caused a release of a regulated substance from a UST system.

(17) [672] "Residential tank" means a tank located on property used primarily for dwelling purposes.
(18) [673] "Residential tank materials" means any accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.
(19) [674] "Secretary" means the Secretary of the Environmental and Public Protection Cabinet.
(20) [675] "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(21) [676] "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(22) [677] "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earth materials (although it may be lined with manmade materials) that is not an injection well.
(23) [678] "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(24) [679] "Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of noncorroding materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.
(25) [680] "Tank contents" means any accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(26) [681] "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070 [Section 4].
(27) [682] "Third party" is defined by KRS 224.60-115(22).
(28) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.
(29) [683] "Underground utility conduits" means any manmade underground conduit installed for utility purposes either on or off site.

(30) [684] "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system [the] release, [of a regulated substance]. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(31) "UST facility" or "site" means, with respect to any owner or operator, all UST systems which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjoins[ ] property.

(32) [670] "UST system" or "system", or "underground storage tank system" means an underground storage tank (as defined in KRS 224.60-100), connected underground piping, underground ancillary equipment, and containment system, if any. UST system means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a UST system into groundwater, surface water, or subsurface soils, or interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance that is permitted or authorized by Kentucky or federal law.

(33) "UST system release detector" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a UST system into groundwater, surface water, or subsurface soils, or interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance that is permitted or authorized by Kentucky or federal law.

(34) [670] "UST system release detector" means method, that complies with the requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.
(35) [676] "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 42 shall have the meaning as identified in Table 1 of this administrative regulation.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.F.R.</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>DEP</td>
<td>Kentucky Department for Environmental Protection</td>
</tr>
</tbody>
</table>
Contact person: Bruce Scott, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: Defines terms, acronyms, and abbreviations used in 401 KAR Chapter 42.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms, in the manner they are used, in 401 KAR Chapter 42.
(c) How this administrative regulations conforms to the content of the authorizing statutes: The regulations of 401 KAR Chapter 42 are needed to implement the Underground Storage Tank Program established in KRS 224.60.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow accurate interpretation of 401 KAR Chapter 42 by defining terms that have meanings unique to the Underground Storage Tank (UST) program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will add definitions related to the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) that were previously included in 415 KAR 1:050.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because after the recodification of 415 KAR Chapter 1 into 401 KAR Chapter 42, those terms defined in title 415 of the Kentucky Administrative Regulations must be integrated into the existing 401 KAR Chapter 42.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms by adding clarity to the definitions contained in 401 KAR Chapter 42, which is the chapter that governs the underground storage tank program.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will allow for correct understanding of the defined terms used within the regulations contained in 401 KAR Chapter 42.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment will not alter the definitions that are currently used by these entities. It simply consolidates the definitions used for UST systems and petroleum storage tanks under 401 KAR 42:005.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost associated with implementation of the regulation.
(b) On a continuing basis: There will be no additional costs associated with regulation on a continuing basis.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through federal grants and the restricted funds described in KRS 224.60-150.

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

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

9. TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate underground storage tanks.
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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of 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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40
C.F.R. Part 290 Subpart A, Part 261, 42 U.S.C. 6911c
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources-and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(39) requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [verification], minimum construction and performance standards, leak detection, record-keeping, release reporting, corrective action, closure, financial responsibility and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals, and interim prohibitions.

Section 1. Applicability, Exclusions and Deferrals. The requirements of this chapter apply to all owners and operators of UST systems, except as provided in subsections (1) and (2) of this section. Any UST system listed in subsection (2) of this section shall meet the requirements of Section 2 of this administrative regulation.

(1) Exclusions. The following UST systems are excluded from the requirements of this chapter:
(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and UST systems containing mixtures of hazardous waste and other regulated substances;
(b) Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);
(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;
(d) UST systems having a capacity of 110 gallons or less;
(e) UST systems containing a de minimis concentration of regulated substances;
(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; and
(g) UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.

(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.
(a) 401 KAR 42.040 does not apply to UST systems that store fuel solely for use by emergency power generators.
(b) 401 KAR 42.020, 401 KAR 42.030, 401 KAR 42.040, and 401 KAR 42.050 do not apply to the following UST systems:
1. Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);
2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);
3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 C.F.R. Part 50;
4. Airport hydrant fuel distribution systems; and
5. UST systems with field-constructed tanks.
(c) Dual-purpose UST Systems, UST systems used for dual purposes, one (1) of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

Section 2. Interim Prohibition for Deferred UST Systems. (1) Except as provided in subsection (2) of this section, no person shall install a UST system listed in Section 2 of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):
(a) Will prevent UST system releases due to corrosion or structural failure for the operational life of the UST system;
(b) Is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent a UST system [the] release [of any stored substance]; and
(c) is constructed or lined with material that is compatible with the stored substance.

(2) (a) A UST system without corrosion protection may be installed at a UST facility [site] that is determined by a corrosion expert not to be corrosive enough to cause it to have a UST system release due to corrosion during its operating life.
(b) Owners and operators shall maintain records that demonstrate compliance with paragraph (a) of this subsection for the remaining life of the tank.
(c) The document incorporated by reference in Section 3 of this administrative regulation shall be used in meeting the requirements of subsections (1) and (2) of this section.


(2) The document referenced in [sub[sect[ion][3]] of this section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Program - [of the Division-of-Waste Management], 11 C.M. Davenport Blvd., Frankfort, Kentucky 40601, (502) 564-5581 [41 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6746], from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LALIUNA WLCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 25, 2006 at 10:00 AM at the Kentucky State Capitol, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall 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 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 May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Bruce Scott
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals and interim prohibitions.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish the types of underground storage tanks that are regulated. The parameters include storage capacity, type of substance stored, UST construction standards, and preventing the release of regulated substances.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the scope of the cabinet's Underground Storage Tank Program described under KRS 224.60-105.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation currently assists by establishing the scope of the cabinet’s Underground Storage Tank Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment serves to update the incorporated material and to clarify the applicability of this administrative regulation for dual-purpose UST systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify terminology used for USTs versus petroleum storage tanks.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the scope of the cabinet’s Underground Storage Tank Program described under KRS 224.60-105.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing the scope of the cabinet’s Underground Storage Tank Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals who own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment serves to clarify the term "release" to mean a "UST system release".

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

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-150.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate underground storage tanks.

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 relates to the agents of local government that own or operate underground storage tanks. KRS 224 60-105 authorizes the promulgation of 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 (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

(Amendment)

401 KAR 42:020. UST systems: design, construction, installation, and registration [Performance standards for new UST systems].


STATUTORY AUTHORITY: KRS 224.10-100, 224 60-105, 40 C.F.R. Part 280 Subpart B, Part 281, 42 U.S.C. 6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 (69) requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [notification], minimum construction and performance standards, leak detection, record-keeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes requirements concerning performance standards, registration [notification], and alternatives for upgrading existing UST systems.

Section 1. Adoption of Federal Regulations. (1) The requirements concerning performance standards, registration [notification], and alternatives for upgrading UST systems are governed by 40 CFR Part 280, Subpart B (4949).

(2) 40 CFR 260.22(b) allows for state forms to be used in lieu of federal forms for registration [notification] of UST systems. The "UST Facility Registration Form", DEP 7112 (January 2006) [document] incorporated by reference in Section 8 (2) of this administrative regulation shall be used in meeting the requirements of this administrative regulation. 40 C.F.R. 280 Subpart B and 401 KAR 42.290.

Section 2. New Registrations. The current owner of a UST system shall notify the cabinet of the existence of the UST system by completing the "UST Facility Registration Form", DEP 7112. (January 2006). This form shall be submitted to the cabinet no later than thirty (30) days after installation of the UST system and shall be signed by the owner and operator of the UST system.

Section 3. Amended Registrations. (1) The owner or operator shall submit an amended "UST Facility Registration Form", DEP 7112. (January 2006), that specifically indicates all amendments, within thirty (30) days of any changes to the following items:

(a) Owner or operator of the UST system;

(b) Description of the UST system; or

(c) Financial responsibility.

(2) If an unregistered UST system is discovered during permanent closure activities pursuant to 401 KAR 42-070, an amended "UST Facility Registration Form", DEP 7112. (January 2006), shall be submitted to the cabinet to register the newly-discovered UST system.

Section 4. Changes of Ownership. (1) If ownership of a UST system changes, the new owner shall complete and submit an
amended "UST Facility Registration Form", DEP 7112, (January 2006), to indicate the new ownership. The form shall include the previously-assigned agency interest number and shall be submitted to the cabinet within thirty (30) days after the transaction.

(2) If an owner sells a UST system, the seller shall advise the new owner of the obligation to submit an amended "UST Facility Registration Form", DEP 7112, (January 2006), to the cabinet that indicates the change in ownership. Also, the seller shall submit to the cabinet, within thirty (30) days after the transaction, a copy of the properly-executed deed or other mutually-executed legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number.

Section 6. Issuance of a Certificate of Registration and Reimbursement Eligibility. Upon a determination by the cabinet that the "UST Facility Registration Form", DEP 7112, (January 2006), is complete and accurate, the cabinet shall issue a "Certificate of Registration and Reimbursement Eligibility", DEP 7113, (January 2006). Upon acceptance of the completed form, the cabinet shall assign an agency interest number and shall notify the owner, in writing, of the agency interest number.

Section 7. Interior Lining Inspection. (1) The interior lining of a UST system shall be inspected ten (10) years after installation of the UST system. Follow-up inspections shall occur on five (5) year intervals.

(2) The "Interior Lining Inspection Form", DEP 8050, (January 2006), incorporated by reference in Section B of this administrative regulation, shall be completed when an inspection is conducted and submitted to the cabinet within thirty (30) days of the inspection.

Section 8. Incorporation by Reference. (1) The following material [document] is hereby incorporated by reference:

(a) "UST Facility Registration Form", DEP 7112, (January 2006);

(b) "Certificate of Registration and Reimbursement Eligibility", DEP 7113, (January 2006);

(c) "Interior Lining Inspection Form", DEP 8050, (January 2006);

(2) This material [document] may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 81 C. Michael Davenport Blvd, 4-14, Frankfort, Kentucky 40601, (502) 564-5281 (6746), Monday through Friday, from 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, and may also be obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For Laluanah Witcher, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mercer Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading existing UST systems.

(b) The necessity of this administrative regulation: This administrative regulation establishes the performance standards, notifications, specifications, and alternatives for upgrading existing UST systems that an owner or operator must follow.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides performance standards that are consistent with standards established by the Environmental Protection Agency. The regulations of 401 KAR Chapter 42 are needed to implement the Underground Storage Tank Program established in KRS 224 50.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update forms and procedures regarding the notification of UST systems, technical data, and the interior lining of UST systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the program to reflect current practices and the forms associated with those requirements.

(c) How the amendment conforms to the content of the authorizing statute: The authorizing statutes do not specifically speak to how the cabinet shall establish performance standards or how the cabinet shall issue notifications; therefore, this administrative regulation attempts to specify this material by adopting federal regulations that governs this subject matter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation if new, or by the change, if it is an amendment: The above groups will not be significantly impacted by the amendments in this regulation. The federal regulations that are adopted in Section 1 are not changing. The registration form (DEP7112) was updated, and will require less information from the owners. It was accomplished by coordinating with the State Fire Marshall's office and their program requirements. This amendment will prevent the duplicative efforts between the 2 agencies and lessen the burden on owners and administration of the UST program. The affect will be an overall benefit.

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

(a) Initially: There will be no cost associated with implementation of this regulation.

(b) On a continuing basis: There will be no additional costs associated with regulation on a continuing basis.

(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the collection of annual tank fees of $30.00 per tank; however, there will be no additional funds needed as a result of this amendment. (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

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 may affect local governments that own or operate underground storage tanks.
3. State, in detail, the aspect or service of local government to which this administrative regulation will apply, 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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

Section 1. Adoption of Federal Regulations. (1) The requirements for spill and overflow control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping for underground storage tanks are governed by 40 CFR Part 280, Subpart C and this administrative regulation (4999).
(2) The forms incorporated by reference in Section 4 of this administrative regulation shall be submitted to the cabinet within thirty (30) days of completion of cathodic protection system testing to document the results of the tests which are required by subsection (1) of this section.

Section 2. Cathodic Protection System Evaluation. A person shall meet one (1) of the following qualifications to test cathodic protection systems in the Commonwealth of Kentucky:
(1) Those individuals who meet the definition of "Cathodic protection tester" as defined by 401 KAR 42:005.
(2) Those individuals who, at a minimum, are certified as a "Cathodic protection tester" by NACE International; and
(3) Those individuals who have completed corrosion protection tester training, which includes the following:
(a) Basics of corrosion;
(b) Underground corrosion;
(c) Corrosion prevention;
(d) Assessing physical conditions for corrosion potential;
(e) Review of EPA's regulatory requirements for corrosion protection;
(f) Hands on field experience in the testing of both impressed current and sacrificial anode systems, which includes:
1. Using reference cells;
2. Taking remote readings;
3. How to read and understand a rectifier;
4. How to use a test station;
5. Taking measurements / -850 criterion; and
6. Typical and nontypical problems; and
(g) Review of standards and recommended practices for corrosion protection materials including, NACE, API, NEPA and ASTM.

Section 3. Actions Required as a Result of the Cathodic Protection System Evaluation. (1) If the cathodic protection is inadequate, the cathodic protection system shall be retested within three (3) years of the date of testing.
(2) If the cathodic protection system fails the evaluation, but the cathodic protection tester determines the failure may be attributable to adverse testing conditions and determines the system is otherwise in good working condition, then a retest may be performed within ninety (90) days of the failing evaluation. No action to repair or modify the cathodic protection system shall be required during the ninety (90) day retesting period. If the retest conducted within the ninety (90) day retesting period indicates a system failure, then repairs or modifications must be completed as soon as practicable, but no more than ninety (90) days after the expiration of the ninety (90) day retesting period.
(3) If the cathodic protection system fails the evaluation, and it does not qualify for the ninety (90) day retesting period in subsection (2) of this section, then repairs or modifications shall be completed as soon as practicable, but no more than ninety (90) days after the performance of the evaluation.
(4) A cathodic protection system evaluation shall be required within 180 days after the installation, repair, or modification of a cathodic protection system.

Section 4. Incorporation by Reference. The following documents are incorporated by reference:
(1) "Galvanic (Sacrificial Anode) Cathodic Protection System Evaluation", DEP 8053, January 2006.
(2) "Impressed Current Cathodic Protection System Evaluation", DEP 8053, January 2006.
(3) "60-Day Record of Rectifier Operation for Impressed Current Cathodic Protection System", DEP 8054, January 2006.
(4) These forms may be inspected, copied, or obtained, subject
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to applicable copyright law, at the Underground Storage Tank Branch, 81 C, Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may also be obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For L. Judrees, Receiver, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LFC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, if you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6766, fax (502) 564-4043, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

(a) Provide a brief summary of:
(1) What the administrative regulation does; This administrative regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.
(2) The necessity of this administrative regulation: This administrative regulation indicates to owners and operators the requirements to prevent overfills, spills and operation and maintenance of corrosion protection in order to protect human health and the environment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-105 authorizes the cabinet to promulgate administrative regulations in order to implement federal regulatory requirements for underground storage tanks. This administrative regulation provides the necessary procedures and rules to implement the statute. This program is also in conformance with federal regulations 40 C.F.R. Part 280 Subpart C, Part 281, and federal law 42 U.S.C. 6991c.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes criteria that will be used by contractors, owners, and operators in developing protective measures in order to achieve and remain in compliance with Underground Storage Tank regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update the information on cathodic protection.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the program to be updated to current practices in cathodic protection.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes do not indicate how the underground storage tank program shall be implemented; therefore, it is necessary for the regulations in 401 KAR Chapter 42, which this regulation is a part of, to detail the policies and procedures of the program.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the cathodic protection standards required by the cabinet in order to protect human health and the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400 UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change. If it is an amendment: This amendment will provide owners and operators current guidelines on the expectations the cabinet has regarding cathodic protection and information relating to overfills and spills.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost associated with implementation of this regulation.
(b) On a continuing basis: There will be no additional costs associated with this regulation on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be funded by the UST Administration Fund established in KRS 224.60-150.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with underground storage tanks while not regulating others.

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 may affect local governments that own or operate USTs.
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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 authorizes the promulgation of 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 (+/-): No effect.
Expenditures (+/-): No effect.
Other Explanation: The cabinet expects no significant impact from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:040. UST system release detection.

RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart D, Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40
C.F.R. Part 280 Subpart D, Part 281, 42 U.S.C. 6991c
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224 10-100 requires the [Natural-Resources-and] Environmental and Public Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224 60-105(9) requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224 60-105(5) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes the requirements for UST system release detection and recordkeeping for all UST systems.

Section 1. Adoption of Federal Regulations. (1) The requirements for UST system release detection and recordkeeping for UST systems are governed by 40 C.F.R. Part 280 Subpart D (40FR).
(2) The documents incorporated by reference in Section 3 (2) of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.
(3) The results of the following tests required by 40 C.F.R. Part 280 Subpart D shall be submitted to the cabinet within thirty (30) days of the test completion:
(a) Annual Line Tightness Test for Pressurized Piping;
(b) Annual Operation and Maintenance Test;
(c) Five (5) year Tank Tightness Test; and
(d) Tri-annual Line Tightness Test for American Suction Piping.

Section 2. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Cabinet for Environmental Protection, Storage Tank Branch, the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 3. Incorporation by Reference. (1) The following material is [documents are hereby] incorporated by reference
(a) "Underground Storage Tank System: Site Assessment Outline for External UST System Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (January 2002)(October 1998); and
(2) This material may be inspected, copied, and obtained. [The documents referenced in subsection (1) of this section are available for inspection, copying, and subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, from 8 a.m. to 4:30 p.m., Eastern time, excluding state holidays, and may also be obtained on the Division of Waste Management’s web page located at www.waste.ky.gov.

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May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation adopts federal regulations to establish requirements for release detection and recordkeeping for all underground storage tank (UST) systems.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the federal regulations for release detection and recordkeeping for all UST systems.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes UST release detection and reporting requirements for 401 KAR Chapter 42 as required by statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes release detection and reporting requirements described in KRS 224.60-100 and 224.60-105.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the incorporated materials.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the incorporated materials.
(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms to establishing the release detection and reporting requirements for the UST Program.
(d) How the amendment assists or will assist in the effective administration of the statutes: This amendment assists or will assist in the effective administration of the statutes for UST release detection and recordkeeping.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporated materials for UST release detection and recordkeeping.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: There will be no costs associated with implementation of this administrative regulation.
(b) On a continuing basis: There will be no additional costs associated with implementation of this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts

JOHN W. CLAY, Deputy Secretary
For LuJuanWhitley, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on
described in KRS 224.60-150.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation had previously established an administrative fee of $30.00 per tank to be paid annually by UST owners or operators.

(9) TIERING. Is tiering applied? No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any services provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment may affect local governments that own or operate underground storage tanks.

3. 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 relates to the agents of local governments that own or operate underground storage tanks.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

RELATES TO: KRS 224 033, 224.10, 224.60, 40 C.F.R. Part 280 Subpart E, 40 C.F.R Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 C.F.R. Part 280 Subpart E, 40 C.F.R Part 281, 42 U.S.C. 6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources and Environmental] Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.60-105 (f3) requires the cabinet to regulate underground storage tanks by requiring registration [notification], minimum construction and performance standards, leak detection, recordkeeping, reporting UST system releases, corrective actions, closures, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This administrative regulation establishes the requirements for reporting of suspected UST system releases, and investigation of off-site impacts.

Section 1. Adoption of Federal Regulations. The requirements for reporting of suspected UST system releases and investigation of off-site impacts for underground storage tanks systems are governed by 40 C.F.R. Part 280 Subpart E ([1990]).

Section 2. Suspected UST System Release Reporting. A suspected UST system release shall be reported immediately to the Environmental Response Team at (606) 220-2380 or (502) 564-2360.

Section 3. Extensions. With the exception of the reporting requirements in Section 2 of this administrative regulation, the owner or operator of a UST system may request an extension of the timeframe for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

JOHN W. CLAY, Deputy Secretary
For LADJANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Meri Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006. Send written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reefly Road, Frankfort, Kentucky 40601
Phone (502) 564-6716, fax (502) 564-4049.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements for the reporting of suspected releases and investigation of the associated off-site impacts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the reporting of suspected releases and the investigation of off-site impacts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the reporting of suspected releases and the investigation of off-site impacts.

(d) Whether this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the requirements to report suspected releases and the investigation of off-site impacts.

(2) If 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 serves to update the adopted federal regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the adopted federal regulations.

(c) How the amendment conforms to the context of the author-
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ENIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42-060. UST System release [release] response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.61, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991-6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-107, 40 C.F.R. Part 280 Subpart F, Part 281, 42 U.S.C. 6991-6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resources and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224 60-105(5) requires the cabinet to regulate underground storage tank (UST) systems by requiring regulation [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224 60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes the requirements for UST system release response, site characterization, corrective action, and public participation.

Section 1. Adoption of Federal Regulation. (1) The requirements for UST system release response, site characterization, corrective action and public participation for UST systems are governed by 40 C.F.R. Part 280 Subpart F [4944].

(2) The documents incorporated by reference in Section 3 [2] of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

Section 2. Extensions. The owner or operator of a UST system may request an extension of the time frame for reports required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 3. No Further Action Letter. (1) When the UST facility has met all requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter for the UST facility.

(2) Any unpaid registration fees due in accordance with 401 KAR 42-200, shall be paid in full prior to the cabinet issuing a no further action letter to any UST facility.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Site [Underground Storage Tank System] Check Outline", (January 2005) [October 1996];
(b) "Site [Underground Storage Tank System] Investigation Outline", (January 2005) [October 1996];
(c) "Underground Storage Tank System Corrective Action Plan Outline", (January 2005) [October 1996];
(d) "UST [Underground Storage Tank] System Release Response and Initial Abatement Requirements Outline", (January 2005) [October 1996], and
(e) "Site Investigation Checklist Form", DEP 8949, (January 2006) [UST-Groundwater Sample Analysis Form", DEP Form 2013 (September 5, 1996).

(2) This material may be inspected, copied, or obtained [The documents referenced in subsection (1) of this section are available for inspection and copying]. Subject to copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport

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 may affect local governments that own or operate underground storage tanks.

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 relates to the agents of local government that own or operate underground storage tanks. KRS 224, 60-105 authorizes the promulgation of 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 (+): No effect

Expenditures (-): No effect

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.
VOLUME 32, NUMBER 11 – MAY 1, 2006

Blvd., Frankfort, Kentucky 40601. (502) 564-5981 [of the Division of Waste Management, 14 Rally Road, Frankfort, Kentucky 40601; (502)564-6746], from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays, and may also be obtained on the Division of Waste Management’s Web page located at www.waste.ky.gov.

[Section 3–Extensions—The owner or operator of a UST system may request extension of a time-frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.]

JOHN W. CLAY, Deputy Secretary
For LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Merro Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Bruce Scott, P. E., Director, Division of Waste Management, 14 Rally Road, Frankfort, Kentucky 40601, Phone (502) 564-6716, fax (502) 564-4049.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the federal regulations for release response, site characterization, corrective action, and public participation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for releases from USTs and adopts the federal standards for release response, site characterization, corrective action, and public participation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the incorporated materials.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the incorporated materials.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the requirements for releases from USTs and adopts the federal standards for release response, site characterization, corrective action, and public participation.
(d) How the amendment will assist in the effective administration of the statutes: This amendment serves to update the incorpo-
rate materials for release response, site characterization, corrective action, and public participation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporate materials for release response, site characterization, corrective action, and public participation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs associated with implementation of this administrative regulation.
(b) On a continuing basis: There will be no additional costs associated with implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded through two federal grants and the restricted fund receipts described in KRS 224.60-150.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.
(9) TIERING. Is tiering applied? No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate underground storage tanks.
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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of 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 (+/-): No effect. Expenditures (+/-): No effect. Other Explanation: The cabinet expects no significant impact from this administrative regulation.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)


RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280 Subpart G, Part 281, 42 U.S.C. 6991-6991c


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public [Natural Resource and Environmental] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 [224.10-100] requires the cabinet to regulate underground storage tank (UST) systems by requiring [notification], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems, which identifies the requirements for UST systems. This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

Section 1. Applicability. (1)(a) This administrative regulation shall apply to any owner or operator of a UST system that has a UST system, which submitted a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) prior to January 1, 1998, or submits a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) [after January 1, 1998).

(b) The following documents are hereby incorporated by reference:

(1) "Underground Storage Tank System Closure Outline" (October 1993);
(2) "Notice of Intent to Permanently Close Underground Storage Tank System Form," DEP Form 5025 (July 1996), and
(3) "Closure Assessment Report Form," DEP Form 6058 (July 1996).

(2) The owners and operators of a UST system who, prior to the effective date of this administrative regulation, either submitted a notice of intent to permanently close underground storage tank systems, or reported a confirmed release to the cabinet, shall comply with the closure requirements and corrective action requirements in existence at the time the notice of intent to permanently close underground storage tank systems was received by the cabinet's regional office or the confirmed release was reported to the cabinet.

(3) A UST system owner or operator that chooses to remove a UST system from the ground that was permanently closed in place, or emptied and taken out of service, prior to December 22, 1988 shall comply with the requirements that were in place prior to April 18, 1984 regardless of the substantive date of the Notice of Intent Form.

(4)(a) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received (or that reported a confirmed release) between April 18, 1984 and January 1, 1998 shall comply with the closure requirements (or for a confirmed release report, the corrective action requirements) in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management (or for a confirmed release report, the requirements in existence at the time the release was reported) as a written requirement signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in sub-section (2) of this section and Sections 3 through 7 of this administrative regulation.

(b) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management (or for a confirmed release report, the requirements in existence at the time the release was reported), unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owner or operator intends to close the site as specified in sub-section (2) of this section and Sections 3 through 7 of this administrative regulation, or as specified in 401 KAR 42:071.

Section 2. [Incorporation by Reference]. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Closure Outline" (October 1993);
(b) "Notice of Intent to Permanently Close Underground Storage Tank System Form," DEP Form 5025 (July 1996), and
(c) "Closure Assessment Report Form," DEP Form 6058 (July 1996).

(2) "Kentucky Underground Storage Tank Assessment Wells Form," DEP Form 5023 (July 1996);
(3) "Amenity Petroleum Institute—Recommended Practice 1604—Removal and Disposal of Used Underground Petroleum Storage Tanks" (December 1987);
(4) "Amenity Petroleum Institute—Publication 1916—Safe Entry and Cleaning of Petroleum Storage Tanks" (May 1994); and

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 4101 Ryall Road, Frankfort, Kentucky 40601, (502) 664-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

Section 3. Temporary Closure. (1) If a UST system is temporarily closed, the owners and operators shall continue operation of their facility and protective measures necessary to prevent contamination of groundwater and surface water, including but not limited to:

(a) Leave vent lines open and functioning;
(b) Store all other lines, pumps, manways, and ancillary equipment; and
(c) Submit an amended "UST Facility Registration [Notification for Underground Storage Tank System Form, DEP Form 7112. (January 2000), (DEP Form 6024)]" (incorporated by reference in 401 KAR 42:020) to the cabinet (Underground Storage Tank Branch of the Division of Waste Management), indicating that the UST system has been ordered to temporary closure status.

(3) If a UST system is temporarily closed for more than twelve (12) months, and does not meet the performance standards of 401 KAR 42:020, then the UST system will be permanently closed (closely the UST system) in accordance with Section 4 of this administrative regulation if it does not
meet either the performance standards in 401 KAR 42:020 (for new UST systems) or the upgrading requirements in 401 KAR 42:020 (for existing UST systems, except that the spill and overfill equipment requirements do not have to be met)).

(b) The owners and operators shall permanently close the standard UST system at the end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12) month temporary closure period. [The owners-and-operators shall complete a closure assessment, in accordance with Section 5 of this administrative regulation, before applying for an extension.]

Section 3. [4.] Permanent Closure and Changes in Service.

(1)(a) Owners and operators shall notify the cabinet [Division of Waste Management] of their intent to permanently close or make a change in service for a UST system a minimum of two (2) weeks (fourteen [14] calendar days) [at least thirty [30] days] prior to beginning either the permanent closure or change in service under subsections (2) and (3) of this section. This notice shall be submitted on the "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114. (January 2006). [Form (DEP Form-5005)] shall be submitted to the cabinet [signature by the UST system owner, operator, or authorized representative].

The closure assessment required under Section 4 (6) of this administrative regulation shall be performed after submitting notification to the cabinet, but prior to completing the permanent closure or change in service.

(2) To permanently close a UST system, the owners and operators shall empty and clean the UST system by removing all tank contents and residual tank materials. All UST systems permanently taken out of service shall be either removed from the ground or filled with an inert solid material.

(3) Continued use of a UST system to store a nonregulated substance shall constitute a change in service. Before a change in service, the owners and operators shall empty and clean the UST system by removing the tank contents and residual tank materials. The owners and operators shall also conduct a closure assessment in accordance with Section 5 of this administrative regulation.

Section 4. [6.] Assessing the Site at a Temporary Closure, Permanent Closure or Change in Service. (1)(a) Before completing permanent closure or change in service for a UST system, or at the end of the twelve (12) month temporary closure period identified in Section 2(3)(3) of this administrative regulation, the owners and operators shall measure for the presence of a UST system release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, the owners and operators shall consider the method of closure, the nature of the stored substance, the type of backdrop, the depth to groundwater, and other factors appropriate for identifying the presence of a UST system release. In accordance with 401 KAR 42:080, the requirements of this paragraph shall be satisfied if one (1) of the external UST system release detection methods allowed in 401 KAR 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and indicates that no UST system release has occurred during the life of the UST system.

(b) The closure assessment required by paragraph (a) of this subsection shall be performed in accordance with the requirements of the [Underground Storage Tank System] "Closure Outline", (January 2006). [Incorporated by reference in Section 2 of this administrative regulation]. The "Closure Assessment Report", (DEP Form-5125, (January 2006), shall be submitted to the cabinet [Underground Storage Tank Branch of the Division of Waste Management] within ninety (90) days after UST system removal, closure in place, or change in service.

(2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (1) of this section, or by any other manner, [the owners and operators shall begin initial response activities. Initial abatement, site characterization, site investigations, initial site characterization, free product removal, investigations for soil and groundwater contamination, corrective action, and public participation, shall be performed in accordance with 401 KAR 42:050].

(3) The handling, transportation, and disposal of any regulated substance from a UST system and any contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed pursuant to this administrative regulation shall be performed in accordance with applicable requirements of 401 KAR Chapter 30 through 49.

Section 5. [6.] Closure Records. [4] In accordance with 401 KAR 42:030 and this administrative regulation, the owners and operators shall maintain records that demonstrate compliance with closure requirements under Section 4 (6) of this administrative regulation. The results of the closure assessment required by Section 4 (6) of this administrative regulation shall be maintained for at least three (3) years after receipt of the closure letter indicating that no further action is required for the permanent closure or change in service.

[5] The records required by subsection (1) of this section shall be maintained by either the owner or operator who placed the UST system or by the current owner or operator of the facility. If the records cannot be maintained at the facility, they shall be removed to the Underground Storage Tank Branch of the Division of Waste Management.

Section 6. [7.] Extensions. The owner or operator of a UST system may request extension of the [4] time frame for reports [any report] required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment [warranted].

Section 7. No Further Action Letter. (1) When the UST facility has met all requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter for the UST facility.

(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter to any UST facility.

Section 8. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Closure Outline", (January 2006).

(b) "Notice of Intent to Permanently Close Underground Storage Tank System", DEP 7114, (January 2006).

(c) "Closure Assessment Report", DEP 5055, (January 2006).

(d) American Petroleum Institute Recommended Practice 1694, "Closure of Underground Petroleum Storage Tanks", (Reaffirmed 2001)

(e) American Petroleum Institute Recommended Practice 1631, "Internal Lining and Periodic Inspection of Underground Storage Tanks", (June 2001); and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, (502) 564-5981, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays and may also be obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
for LaJuana Wilcher, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
VOLUME 32, NUMBER 11 – MAY 1, 2006

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Merro Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 working days prior to the hearing, of their interest and intention to attend the hearing. 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 May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott, Director

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for out-of-service UST systems, the temporary and permanent closure of UST systems, and change in service of UST systems.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation continues to establish the requirements for out-of-service UST systems, the temporary and permanent closure of UST systems, and change in service of UST systems.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment updates the incorporated materials.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the incorporated materials.
   (c) How the amendment conforms to the context of the authorizing statutes: This amendment establishes the requirements for out-of-service, change-in-service, and temporary and permanent closure of UST systems.

3. How the amendment will assist in the effective administration of the statutes: This amendment serves to update the incorporated materials for out-of-service, change-in-service, temporary and permanent closure of UST systems.

4. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no costs associated with implementation of this administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-150.
   (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.
   (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.
   (f) TIERING: Is tiering applied? No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation may affect local governments that own or operate underground storage tanks.
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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.10-105 authorizes the promulgation of 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 (+/-): No effect.
      Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposal)

401 KAR 42:080. Classification of UST systems containing petroleum [underground-storage-tank-systems] and listing of associated cleanup levels.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the Environmental and Public [Natural Resources and Environmental Protection] Cabinet to promulgate administrative regulations on underground storage tank (UST) systems to protect public health and the environment. The statute recognizes that the administrative regulations may distinguish between types, classes, and ages of UST systems. KRS 224.60-137 requires the cabinet to adopt standards for corrective action for a UST system release of petroleum into the environment [from a petroleum UST system]. This chapter identifies requirements for UST systems containing...
petroleum. This administrative regulation establishes site [facility] classification and corrective action standards for [petroleum] UST systems containing petroleum.

Section 1. Scope and Applicability. (1) An owner or operator who either submits a notice of intent to permanently close a UST system containing petroleum or requests a confirmed UST system release of petroleum to the cabinet after the effective date of this administrative regulation, shall, at the time of permanent closure of the UST system or when otherwise directed by the cabinet in order to appropriately classify the UST system, submit a Classification Guide, DEP 8055, (January 2006), incorporated by reference in Section 3 of this administrative regulation, The Classification Outline, (January 2006), [document] incorporated by reference in Section 3 [2] of this administrative regulation shall be used in completing the Classification Guide, DEP 8055, (January 2006), for determining the classification of a site [sets forth a classification scheme for all petroleum UST systems]. The Classification Outline, (January 2006), also sets forth the applicable [document also establishes] cleanup levels for petroleum constituents for each classification to be complied with by the owner or operator in completing corrective action.

(2) Owners and operators of a UST system containing petroleum who have, prior to the effective date of this administrative regulation, either submitted a notice of intent to permanently close the UST system, or reported a confirmed UST system release of petroleum to the cabinet, shall comply with the classification requirements and cleanup levels for all constituents, with the exception of lead in soils, that were in existence at the time the notice of intent to permanently close UST system was reviewed by the cabinet or the confirmed release was reported to the cabinet.

(3) The cleanup level for lead in soils, contained in the Classification Outline incorporated by reference in Section 3 of this administrative regulation, shall apply to all UST system releases containing waste oil occurring prior to the effective date of this administrative regulation. The cleanup levels for petroleum constituents at a hazardous waste facility are determined by the classification of the UST system.

(a) Subsection (2) of this section and Section 2 of this administrative regulation shall apply to UST systems for which a "Notice of Intent to Permanently Close Underground Storage Tank System Form" (DEP Form 6026) (incorporated by reference in 401 KAR 42-670) is received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996 and to UST systems for which a confirmed release is reported after January 1, 1996.

(b) Subsection (2) of this section and Section 2 of this administrative regulation shall apply to UST systems for which a confirmed release was reported or a closure notice was received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996 and to UST systems for which a notice of intent to permanently close the UST system is received prior to January 1, 1996 as follows:

1. For any confirmed release reported prior to January 1, 1996 or any "Notice of Intent to Permanently Close Underground Storage Tank System Form" (DEP Form 6026) received prior to January 1, 1996, but for which a closure letter had not been issued by the cabinet prior to that date, the UST systems addressed in that release report or closure notice may be closed under this administrative regulation if the owner or operator submits to the Underground Storage Tank Branch of the Division of Waste Management a letter indicating their commitment to close the UST system or address the release pursuant to this administrative regulation.

2. The letter referenced in subparagraph 1 of this paragraph shall contain the identification number for the site, the name, address, and phone number of the facility or company where the UST system is located, the name, address, and phone number of the tank owner, and an explicit statement of the action being requested. The letter shall be signed by the owner or operator. The request shall apply to all UST systems referenced in the release report or closure notice received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996.

(2) The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

Section 2. Affected Property Owner Consent. If an affected off-site property owner consents, the allowable residual soil levels applicable on-site may be utilized in addressing contamination within the property boundaries of that consenting off-site property owner. Such consent shall be submitted to the cabinet on the "Affected Property Owner Consent Form", DEP 8057, (January 2006), and shall be accompanied by a site map identifying the location and address of the affected property in relation to the site.

Section 3. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Petroleum-Underground-Storage-Tank System-Facility" Classification Outline, (January 2006)[(October 1995)];

(b) "Classification Guide", DEP 8055, (January 2006)[Form 6056- (October 1996)]; and

(c) "Affected Property Owner Consent Form", DEP 8057, (January 2006); and [Form 6064- (October 1996)].

(d) "Kentucky Guidance for Ambient Background Assessment", (January 2004).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd [at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-6746, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LuJuan Wilcher, Secretary
APPROVED BY AGENCY: April 12, 2006
FILE WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Maro Street, Room 226, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2006, 5 weeks prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-6404, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person, Bruce Scott
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes classification and corrective action standards for petroleum UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish classification and corrective action standards for petroleum UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes criteria to distinguish between the type, class, and age of a UST and the corrective action standards for petroleum releases from USTs.

(d) How this administrative regulation currently assists or will assist in the effective enforcement of the statute: This administrative regulation establishes classification and corrective action standards for petroleum UST systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment serves to update the incorporated materials on classification and corrective action standards.

(b) The necessity of the amendment to this administrative regulation: This amendment serves to update the incorporated materials on classification and corrective action standards.

(c) How the amendment conforms to the context of the authorizing statutes: This administrative regulation establishes criteria to distinguish between the type, class, and age of a UST and the corrective action standards for petroleum releases from USTs.

(d) How the amendment will assist in the effective administration of the statute: This amendment will update the classification and corrective action standards in order to protect human health and the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporated materials for UST systems.

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

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Information and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-150.

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

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

(9) WILLINGNESS TO BE APPLIED? No tieing is applied. To apply tying to the amendment would unduly regulate some entities with USTs while ignoring others.

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 may affect local governments that own or operate underground storage tanks.

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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.10-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenses 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 (+/-): See below.

Expenditures (+/-): See below.

Other Explanation: The cabinet expects no significant impact from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)


RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart H, Part 261, 42 U.S.C. 6901c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 C.F.R. Part 280 Subpart H, Part 261, 42 U.S.C. 6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and [Natural Resources and Environment] Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring registration (notification), minimum construction and performance standards, leak detection, record-keeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(5) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems.

This chapter identifies requirements for UST systems. This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum.

Section 1. Adoption of Federal Regulations. The requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental UST system releases arising from the operation of UST systems containing petroleum are governed by 40 C.F.R. Part 280 Subpart H(1994).


(1) The Petroleum Storage Tank Environmental Assurance Fund may be utilized as a mechanism to demonstrate financial responsibility in accordance with 40 C.F.R. 280.101 if the following requirements are satisfied:

(a) A person owns or operates a petroleum storage tank(s);

(b) The owner or operator certifies financial responsibility for the petroleum storage tank(s) in accordance with KRS 224.60-120; and

(c) The owner or operator registers the petroleum storage tank with the cabinet in accordance with 401 KAR 42-020.

(2) An owner or operator shall be deemed by the cabinet to have satisfied the requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance Fund to meet the financial responsibility requirements of 40 C.F.R. 280.101 if:

(a) A Certificate of Registration and Reimbursability Eligibility has been issued to the owner or operator of a petroleum storage tank in accordance with 401 KAR 42-020; and

(b) The cabinet has determined that the owner or operator is qualified for participation in the Financial Responsibility Account of the Petroleum Storage Tank Account through compliance with 401 KAR 42-030 and 42-040.

(3) Federal and state-owned facilities shall not be eligible to utilize the state fund mechanism.

Section 3. Certification of Financial Responsibility. An owner or operator shall certify, through signature on the UST Facility Registration Form DEP 7112 (January 2006), required in 401 KAR 42-020, that financial responsibility has been established and maintained in accordance with Section 1 of this administrative regulation.

JOHN W. CLAY, Deputy Secretary
VOLUME 32, NUMBER 11 – MAY 1, 2006

for LAJJAN WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 am ET at the Capital Plaza Tower Auditorium, 500 Merce Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-7616, fax (502) 564-4042, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of UST systems containing petroleum.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for demonstrating financial responsibility and compensation for third party damages.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing requirements for demonstrating financial responsibility and compensation of third party damages.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing requirements for demonstrating financial responsibility and compensation of third party damages.
   (e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation: This amendment establishes that the Commonwealth's Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be used as a mechanism to demonstrate financial responsibility.
      (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that the PSTEAF may be used as a financial responsibility mechanism.
      (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms by establishing that the PSTEAF may be used as a financial responsibility mechanism.
      (d) How the amendment will assist in the effective administration of the statutes: This amendment assists in establishing that the PSTEAF may be used as a financial responsibility mechanism.
      (2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST Contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.
      (3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. This amendment only updates the incorporated materials for UST systems.
      (4) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: There will be no costs associated with implementation of this administrative regulation.
         (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.
   (5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-150.
   (6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will not need to be an increase in funding or fees to implement this amendment.
   (7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.
   (8) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owner and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate USTs.
3. State, in detail, the action of state or local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the action or service or authorizes the action taken by the administrative regulation. This amendment relates to the actions of the local government that own or operate USTs. KRS 224.60-105 authorizes the promulgation of 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 (+/-): No effect.
   Expenditures (+/-): No effect.
   Other Explanation: The cabinet expects no significant impact from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Division for Environmental Protection
Division of Waste Management

Amendment


RELATES TO: KRS 224.10, 224.60
STATUTORY AUTHORITY: KRS 224.10-100, 224.60-100, 224.60-105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per underground storage tank (UST) system from owners or operators of UST systems [containing regulated substances] for the purpose of funding the administration of the underground storage tank program. [Underground Storage Tank Branch of the Division of Waste Management] This administrative regulation establishes provisions for the payment of an annual registration fee.
Section 1. Applicability. This administrative regulation shall apply to all owners and operators of UST systems, [need to store regulated substance].

Section 2. Annual Registration Fee. (1) The owner or operator shall pay a thirty ($30) dollar annual registration fee for each UST system that is in the ground, and not permanently closed in accordance with 401 KAR 42:070 on July 1 of a year (July 1 through June 30). Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management. Checks shall be made payable to the Kentucky State Treasurer and be submitted within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

Section 3. New Registrations. [Notification of buildings.] (1) The current owner of a UST system shall notify the cabinet of the existence of the UST system by completing a Notification of Underground Storage Tank System Form (DEP Form 1004) in accordance with 401 KAR 42:020. This form (incorporated by reference in 401 KAR 42:020) shall be submitted to the Division of Waste Management, Underground Storage Tank Branch, 14 Reily Road, Franklin, Kentucky 40044. (2) Annual registration fees shall be submitted in the days after installation of the UST system. Upon acceptance of the completed form, the cabinet shall assign a facility identification number and shall notify the owner, in writing, of the identification number.

Section 4. [Amended Registrations.] (1) The owner or operator shall submit an amended Notification of Underground Storage Tank System Form, that specifically indicates all amendments, within thirty (30) days of any change to the following items: (a) Ownership of the UST system, (b) Description of the UST system, or (c) Financial responsibility.

Section 5. Changes of Ownership. If ownership of a UST system changes, any (4) If ownership of a UST system changes, the new owner shall complete and submit an amended Notification of Underground Storage Tank System Form to indicate the new ownership. The form shall include the previously assigned facility identification number and shall be submitted to the Underground Storage Tank Branch within thirty (30) days after the transaction. (2) If an owner sells a UST system, the seller shall advise the new owner of the obligation to submit an amended Notification of Underground Storage Tank System Form to the Underground Storage Tank Branch that indicates the change in ownership. Also, the seller shall submit to the Underground Storage Tank Branch within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually-executed legal document supporting the sale of the UST system, along with a letter indicating the facility name as registered with the cabinet, the facility location, and the facility identification number.

Section 6. Annual Registration Fee and Certificate of Notification. (1) The owner or operator shall pay a thirty ($30) dollar annual registration fee for each UST system that is in the ground on July 1 of a year (July 1 through June 30). Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management (payable to the Kentucky State Treasurer) within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

Section 7. [Certificate of Notification.] (1) A fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial "UST Facility Registration Form", DEP 7112, January 2006, as required by 401 KAR 42:001. (1) A fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial "UST Facility Registration Form", DEP 7112, January 2006, as required by 401 KAR 42:001. [Notification of Underground Storage Tank System Form].

Section 8. [Amended Registrations.] (1) The owner or operator shall submit an amended Notification of Underground Storage Tank System Form, that specifically indicates all amendments, within thirty (30) days of any change to the following items: (a) Ownership of the UST system, (b) Description of the UST system, or (c) Financial responsibility.

Section 9. If amending the Notification of Underground Storage Tank System Form for an existing UST system, no fee shall be required.

Section 10. If amending the "UST Facility Registration Form", DEP 7112, January 2006, all changes to the Underground Storage Tank System Form shall be submitted in the days after installation of the UST system. Upon acceptance of the completed form, the cabinet shall assign a facility identification number and shall notify the owner, in writing, of the identification number.

Section 11. If an unregistered UST system is discovered during permanent closure activities pursuant to 401 KAR 42:070, (4) If an unregistered UST system is discovered during permanent closure activities, an amended Notification of Underground Storage Tank System Form shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management to register the newly discovered UST system. A one (1) time registration fee of thirty ($30) dollars shall be submitted for each discovered UST system within thirty (30) days after discovery. Registration fees for previous years are not required.

Section 12. Changes of Ownership. If ownership of a UST system changes, any (4) If ownership of a UST system changes, the new owner shall complete and submit an amended Notification of Underground Storage Tank System Form to indicate the new ownership. The form shall include the previously assigned facility identification number and shall be submitted to the Underground Storage Tank Branch within thirty (30) days after the transaction. (2) If an owner sells a UST system, the seller shall advise the new owner of the obligation to submit an amended Notification of Underground Storage Tank System Form to the Underground Storage Tank Branch that indicates the change in ownership. Also, the seller shall submit to the Underground Storage Tank Branch within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually-executed legal document supporting the sale of the UST system, along with a letter indicating the facility name as registered with the cabinet, the facility location, and the facility identification number.

Section 13. Unpaid registration fees shall be the responsibility of the new owner.

Section 14. Annual Registration Fee and Certificate of Notification. (1) The owner or operator shall pay a thirty ($30) dollar annual registration fee for each UST system that is in the ground on July 1 of a year (July 1 through June 30). Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management (payable to the Kentucky State Treasurer) within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

Section 15. Annual registration fees submitted beginning with the July 1, 1993 year will be acknowledged with a Certificate of Notification (DEP Form 6002). The certificate shall be posted in a conspicuous location at the facility, and it shall expire one (1) year from the date of issuance.

JOHN W. LAY, Deputy Secretary
For LAJUANA S. WILCOX, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Maro Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, and you shall be notified by the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made before the hearing. 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 May 31, 2006. 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: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4048.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Bruce Scott, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions for the owners or operators of UST systems to pay an annual fee of $30 per UST system.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the administrative fee described in KRS 224.60-150.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the administrative fee described in KRS 224.60-150.
(d) How this administrative regulation currently affects or will affect the effective administration of the statutes: This administrative regulation affects or will affect the administrative fee described in KRS 224.60-150.
(e) How this administrative regulation currently affects or will affect the effective administration of the statutes: This administrative regulation affects or will affect the administrative fee described in KRS 224.60-150.
(f) This is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment will change this existing administrative
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amendment)

401 KAR 42:290. Ranking system.

RELATES TO: KRS 12 010-12.020, 224.60-120, 224.60-130, 224.60-140, 40 C.F.R. Part 260

STATUTORY AUTHORITY: KRS 224.60-131(1)(3)(e)  
NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KHS 224.60-131(1), [KRS 224.60-130(3)(e)] requires the establishment of a ranking system for distribution of funds from the petroleum storage tank account. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to address the completion of corrective action and the subsequent payment of claims.

Section 1. Applicability: A ranking system to address the completion of corrective action and the payment of claims shall be established for the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, as set forth in Sections 2 and 3 of this administrative regulation.

Section 2. Ranking System for the Financial Responsibility Account: Facilities eligible to participate in the Financial Responsibility Account shall be ranked as follows:

(1) For purposes of determining extent of damage to the environment:
   (a) Rank 1. Those facilities that are the source of confirmed contamination to domestic use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42:080,
   (b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater Table I of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I and are not the source of contamination to domestic use wells, springs, or cisterns.
   (c) Rank 3. Those facilities required to use the levels listed in Class II and Groundwater Table I of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I and are not the source of contamination to domestic use wells, springs, or cisterns.
   (d) Rank 4. Those facilities required to use the levels listed in Class IV and Groundwater Table II of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II and are not the source of contamination to domestic use wells, springs, or cisterns.
   (e) Rank 5. Those facilities required to use the levels listed in Class III and Groundwater Table II of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42:080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table II and are not the source of contamination to domestic use wells, springs, or cisterns.

(2) Facilities shall be further categorized within their respective rank as determined in subsection 1 of this section, based on the

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment may affect local governments that own or operate USTs.

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 relates to the agents of local government that own or operate USTs.

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 (-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.
financial ability of the owner or operator as follows:
(a) Facilities shall be placed in Category 1 within their respective rank if:
1. The owner’s or operator’s average adjusted gross income or average net income for the last five (5) years is less than $50,000;
2. The owner’s or operator’s average annual revenue and income for the last five (5) years is less than $100,000; or
3. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.
(b) Facilities shall be placed in Category 2 within their respective rank if:
1. The owner’s or operator’s average adjusted gross income or average net income for the last five (5) years is more than $50,000 but less than $100,000; or
2. The owner’s or operator’s average annual revenue and income for the last five (5) years is more than $100,000 but less than $250,000.
(c) Facilities shall be placed in Category 3 within their respective rank if:
1. The owner’s or operator’s average adjusted gross income or average net income for the last five (5) years is more than $100,000; or
2. The owner’s or operator’s average annual revenue and income for the last five (5) years is more than $250,000.
(d) Facilities within each category shall be further prioritized based on the cabinet’s evaluation of the threat posed to human health and the environment by the releases from a petroleum storage tank.
(e) The cabinet shall utilize the information provided in an owner’s or operator’s Application for Assistance for purposes of determining financial ability to perform corrective action. The cabinet shall require that additional information be submitted if necessary to determine the financial ability of the owner or operator.
(f) Cabinet inspectors shall be provided access to a facility for the purpose of verifying facility classification. Refusal by an owner or operator to allow access or additional information requested by cabinet inspectors will render the facility ineligible for reimbursement from the cabinet.
(g) If the cabinet receives additional information related to specific facilities, it may amend facility rankings and categories, if necessary, in accordance with subsections 1 and 2 of this section.

Section 3. Facilities eligible to participate in the Petroleum Storage Tank Account shall be ranked as follows:
(1) For purposes of determining extent of damage to the environment:
(a) Rank 1. Those facilities that are the source of confirmed contamination to domestic use wells, springs, or cisterns exceeding the levels specified in Groundwater Table I of the Classification Outline (January 2006), incorporated by reference in 401 KAR 42-080.
(b) Rank 2. Those facilities required to use the levels listed in Class IV and Groundwater Table I of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42-080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I and are not the source of contamination to domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of the regulations in effect prior to April 18, 1994 shall be placed into this rank if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.
(c) Rank 3. Those facilities required to use the levels listed in Class III and Groundwater Table I of the Classification Outline, (January 2006), incorporated by reference in 401 KAR 42-080, where groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I and are not the source of contamination to domestic use wells, springs, or cisterns. Facilities conducting corrective action under the provisions of the regulations in effect prior to April 18, 1994 shall be placed into this rank if required to utilize the levels listed in Groundwater Table I and groundwater contamination has been confirmed at levels exceeding those listed in Groundwater Table I.

Section 4. Ranking Allocations. (1) Issuance of written directives shall be prioritized for facilities within the Financial Responsibility Account and the Petroleum Storage Tank Account, respectively, according to rank and category, in the following order:
(a) Rank 1, Category 1;
(b) Rank 1, Category 2;
(c) Rank 1, Category 3;
(d) Rank 2, Category 1;
(e) Rank 2, Category 2;
(f) Rank 2, Category 3;
(g) Rank 3, Category 1;
(h) Rank 3, Category 2;
(i) Rank 3, Category 3;
(j) Rank 4, Category 1;
(k) Rank 4, Category 2;
(l) Rank 4, Category 3;
(m) Rank 5, Category 1;
(c) Rank 5, Category 2; 
(d) Rank 5, Category 3; 
(e) Rank 6, Category 1; 
(f) Rank 6, Category 2; 
(g) Rank 6, Category 3; 

(2) The cabinet shall consider the current legislatively-enacted budget, associated appropriations, and available funding in making the allocations described in subsection 1 of this section. 

(3) The cabinet shall notify owners or operators of the decision to suspend written directives for specified rankings within either the Petroleum Storage Tank Account or the Financial Responsibility Account, respectively, upon a determination of insufficient funding being available to initiate corrective action in all rankings. 

(4) Actions directed and documented by the Environmental Response Team, upon the cabinet’s declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation. 

(5) Facilities performing site checks or initial assessment at the written direction of the cabinet shall be reimbursed in lieu of the ranking system. Facilities or operators of a petroleum storage tank eligible to participate in the petroleum storage tank account shall not be classified for reimbursement if the owner or operator: 

(1) is an individual who: 
(a) Owns or operates five (5) or fewer tanks; and 
(b) Has an average adjusted gross income for the five (5) year period, prior to applying for assistance from the cabinet, of less than $50,000; or 

(2) Has a tank that was abandoned or closed prior to December 31, 1988. This subsection includes a facility under the direction of the implementing-agency pursuant to 401-KAR 42.080-at the time the release is detected. An owner or operator that is an organizational unit of the executive branch of the Commonwealth of Kentucky shall not be reimbursed under this subsection, but shall be classified pursuant to Section 8(1) of this administrative regulation. 

Section 3. Priority for Environmental Damage. (1) A facility shall be ranked for environmental damage priority according to the following: 

(a) The extent of environmental damage caused or threatened, as previously established by the cabinet; 
(b) Standards established in 401-KAR 42.070; and 
(c) Standards established in 401-KAR 42.080. 

(2) Priority due to environmental harm shall be established as follows: 

(a) First priority shall be given to a facility if: 
1. A release of petroleum has contaminated a: 
   a. Domestic use well; 
   b. Domestic use spring; 
   c. Domestic use well-head protection area, as defined in 401-KAR 42.080; 
   d. Drinking water supply; or 
   e. Utility conduit; and 
2. Is not the source of fumes in an occupied building. 

(b) Second priority shall be given to a facility if, due to groundwater contamination, it is required to meet the levels specified in Groundwater Table 1 of the Petroleum Underground Storage Tank System Facility Classification Outline, incorporated by reference in 401-KAR 42.080, for a release of petroleum that poses a direct threat to a: 
1. Domestic use well; 
2. Domestic use spring; 
3. Domestic use well-head protection area; 
4. Drinking water supply; or 
5. Utility conduit. 

(c) Third priority shall be given to a facility if a release: 
1. Has impacted an area outside the facility’s property boundary; 
2. Has not contaminated and does not pose a threat to a: 
   a. Domestic use well; 
   b. Domestic use spring; 

Section 3. Priority for Financial Ability. (1) The cabinet shall determine the financial ability of an applicant who owns or operates a single facility. The following persons shall certify that they do not have an ownership or operating interest in another facility: 

(a) For an individual owner or operator, the individual; 
(b) For a partnership, each partner; and 
(c) For a closely held corporation that is not a subsidiary, affiliate, or parent corporation, each officer, director, and shareholder. 

(2) The cabinet shall determine the financial ability of an individual or partnership with an ownership or operating interest in more than one (1) facility if the applicant demonstrates that: 

(a) The sole source of income is revenue from the ownership or operation of the facility; and 
(b) The entity is unable to pay the entry-level fee for participation in the petroleum storage tank account. 

(3) The cabinet shall determine the financial ability of a closely held corporation, not a subsidiary, affiliate, or parent of another corporation, that is the owner of more than one (1) facility if: 

(a) The profits of the corporation are the sole source of revenue for the shareholders; and 
(b) The corporation has insufficient revenue to pay the entry level fee for participation in the petroleum storage tank account. 

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit the last five (5) years of income tax returns for the person, partnership, or corporation. 

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to: 

(a) First: 
1. An individual, partnership or corporation whose average adjusted gross income for the five (5) year period is less than $50,000; 
2. A public entity with an annual revenue of less than $100,000; or 
3. An entity registered and recognized by the federal government as a tax exempt nonprofit organization; 
(b) Second: 
1. An individual, partnership, or corporation whose average adjusted gross income for the five (5) year period is less than $100,000 but more than $50,000; or 
2. A public entity with annual revenue of less than $250,000 but more than $100,000; and 
(c) Third: 
1. An individual, partnership, or corporation whose average income for the five (5) year period is more than $100,000; or 
2. A public entity with an annual revenue of more than $250,000. 

(3) A partnership applicant shall submit the name and Social Security number of each partner. 

(4) A subchapter S-closely held C corporation applicant shall submit the name and Social Security number of each officer, director, and shareholder in the corporation. 

(5) A public entity who is an applicant shall submit its annual budget for the last five (5) years to demonstrate financial ability. 

(6) The cabinet shall require that additional information be submitted, if necessary, to determine the financial ability of an applicant. 

Section 5. (1) The cabinet shall recover an amount paid to a person receiving consideration for financial ability if the information
through (13)(a) of this section in order of receipt of the claim;
(14)(a) A claim from an organizational unit of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have its claim paid first, in order of the date of receipt of the claim.
(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch shall be:
1. Paid based upon financial ability as determined in Section 4(2)(c) of this administrative regulation, in order of receipt of the claim, and
2. Ranked in the same manner as a claim from a private person.

Section 7. (1) Payment of Certain Classes of Claims. The cabinet may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid, in determining that a class of claims shall not be reimbursed, the cabinet shall consider the following factors:
(a) The impact of paying a particular class of claims on the cabinet's ability to reimburse claims under the Financial Responsibility Account, 401 KAR 42:260, and the Small Owners-Tank Removal Account, 401 KAR 42:330;
(b) The current and expected income of the fund; and
(c) Actuarial projections for the number of future claims on the fund.
(2) The cabinet shall issue a public notice of the decision to suspend reimbursement of a class of claims.

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 31, 2006 at 10 a.m., ET at the Capitol Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of Intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard at the public hearing is encouraged to submit written comments 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 May 31, 2006. Send written notification of Intent to attend at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Bruce Scott
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the criteria to rank (e.g. prioritize) facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the ranking and financial criteria described in KRS 224.60-130(2) to administer the accounts of the Petroleum Storage Tank Environmental Assurance Fund (PSTEA).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the criteria for ranking facilities according to the extent of environmental damage and the owner's or operator's financial ability to perform corrective action.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation assists by establishing the criteria for ranking facilities according to the extent of environmental damage and the owner’s or operator’s financial ability to perform corrective action.

(2) If 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 proposes to modify the ranking criteria based on the environmental damage caused by groundwater contamination. This amendment also proposes to rank all facilities based on the same criteria regardless of account eligibility in the PSTEAF. Currently, this administrative regulation only ranks facilities eligible for the Petroleum Storage Tank Account.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the same ranking criteria for all facilities covered under the PSTEAF.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing criteria for ranking facilities according to the extent of environmental damage and the owner’s or operator’s financial ability to perform corrective action.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing criteria for ranking facilities according to the extent of environmental damage and the owner’s or operator’s financial ability to perform corrective action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment proposes to prioritize the ranking of facilities based on environmental damage from groundwater contamination and the owner’s or operator’s financial ability to perform corrective action.

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

(a) Initially: There will be no additional costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the petroleum environmental assurance fee described in KRS 224.60-145.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not propose an increase in funding.

(9) TIERING: Is tiering applied? Tiering is applied to all owners and operators of UST systems based on their respective financial ability to perform corrective action and the extent of environmental damage.

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 may affect local governments that own or operate USTs.

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 relates to the agents of local government that own or operate USTs. KRS 224.60-130 authorizes the promulgation of 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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+): No effect. Expenditures (+): See below.

Other Explanation: This amendment may have an adverse effect on the expenditures of a local government. Currently, when an owner or operator applies for assistance from the PSTEAF, only those facilities that qualify for the Financial Responsibility Account (FRA) are assessed an entry level (e.g. deductible). This account is for facilities that are in compliance with the applicable criteria. The Petroleum Storage Tank Account (PSTA) is for facilities that are not in compliance with the same applicable criteria. This would seem to be an oddity, as facilities that are not in compliance are “rewarded” by not being assessed the entry level. This amendment proposes to rank facilities with respect to their placement in the Financial Responsibility Account or the Petroleum Storage Tank Account. This may have an adverse effect on expenditures when an owner or operator applies for reimbursement, as the entry level will be assessed to facilities in either account.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Division of Waste Management

Amendment

401 KAR 42:300. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130(1)(2)(c), (e), 224.60-140(2)(b), (17), 40 C.F.R. Part 280 Subpart H

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(2)(c) requires the establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank owners and operators for compensating third parties for bodily injury and property damage. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or non-sudden accidental releases (a-release) into the environment from a petroleum storage tank at a facility eligible for participation in the Financial Responsibility Account.

(2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if:

(a) The owner or operator has been issued a Certificate of Registration and Reimbursement Eligibility, DEP 711 (January 2006), incorporated by reference in 401 KAR 42-020, and has maintained compliance with the eligibility requirements of the Financial Responsibility Account pursuant to 401 KAR 42-250; and

(b) The cabinet has approved the Application for Assistance, DEP 6983, (January 2006), incorporated by reference in 401 KAR 42-250 pursuant to the provisions of 401 KAR 42-250.

(3) A petroleum storage tank owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if a certificate of eligibility was issued, and an Application for Assistance was approved, by the cabinet prior to the effective date of this administrative regulation, and the owner or operator has maintained compliance with the eligibility requirements for participation in the financial responsibility account in effect at the time of approval.

(4) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the
eligibility of the Financial Responsibility Account pursuant to 401 KAR 42:250, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice. [An owner or operator shall be eligible to receive reimbursement or payment for a third-party claim if he has been issued a certificate of eligibility pursuant to the provisions of 401 KAR 42:260 and has maintained compliance with the eligibility requirements of 401 KAR 42:260.]

(3) A claim for property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(4) A third-party claim shall be paid to the extent specified in 401 KAR 42:260.

Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third-party, or the receipt of an assertion of a claim in writing by a third-party.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) An agreement reviewed and approved by the cabinet [secretary].

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator which was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual damage caused by the release of petroleum.

(2) A claim for property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action [Payment shall be made to the third-party after approval by the secretary].

(3) The aggregate amount of payment of all third-party claims shall not exceed $1,000,000 per occurrence of a release.

(4) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(5) Reimbursement for third-party claims shall be made in accordance with 401 KAR 42:250, Section 2.

(6) Payment shall be made to the third party after approval by the cabinet.

JOHN W. CLAY, Deputy Secretary
For LAUJANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capitol Plaza Tower Auditorium, 500 Merce Street, Room 225, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Bruce Scott, P.E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bruce Scott
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for eligible petroleum storage tank owners and operators to receive reimbursement or payment for third-party damage incurred from a release from petroleum storage tanks.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements and procedures for eligible petroleum storage tank owners and operators to receive reimbursement or payment to compensate third parties for personal injury or property damage.

(c) How this administrative regulation conforms to the context of the authorizing statutes: This administrative regulation conforms by establishing the requirements and procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists by establishing the procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.

(2) If 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 continues to establish the requirements and procedures for a third party to seek reimbursement from bodily injury or property damage, as incurred from a release from petroleum storage tanks.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maintain the requirements and procedures for third-party claims.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky and persons who might file a third-party claim will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment proposes to reflect the cabinet reorganization and changes to form titles and submittal requirements. The cabinet expects no significant impact from this amendment.

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

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the environmental assurance fee described in KRS 224.80-150.
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 may affect local governments that own or operate USTs.

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 relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 and 224.60-130 authorize the promulgation of 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 (+/-): No effect.

   Expenditures (+/-): No effect.

   Other Explanation: This administrative regulation may have an adverse effect on the expenditures of local government. This administrative regulation requires that the cabinet be notified within 21 days of the filing of a third-party action against an owner or operator. This administrative regulation also requires that an owner or operator obtain the cabinet's approval prior to accepting or rejecting a settlement offer. Should an owner or operator fail to adhere to these requirements, the potential exists that the deciding party may be liable for such damages.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(1) (Amendment)


RELATES TO: KRS 224.60-110, 224.60-130(1)(12)(a)
STATUTORY AUTHORITY: KRS 224.60-130(1)(12)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(12)(a) requires the establishment of criteria to be met by persons who contract to perform corrective action. This administrative regulation establishes criteria for obtaining certification to be eligible to contract and to perform corrective action for a release from a (an) underground petroleum storage tank. The administrative regulation is necessary to set minimum standards for determining:

(1) Technical competency and proficiency in the performance of corrective action; and

(2) General knowledge of:

   (a) Cleanup standards required to obtain closure from the Underground Storage Tank Branch;

   (b) Health and safety standards; and

   (c) Cabinet administrative regulations.

Section 1. Definitions. (1) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(2) "Participation" [as] means direct and substantial involvement in each aspect of corrective action and report preparation, including site characterization, preparation of a site investigation report, preparation of a proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(3) "Supervise" means having the authority and responsibility for the performance of corrective action at a facility as a result of a release from petroleum storage tank system, and having the ability to exercise independent judgment and to direct the activities of an employee or subcontractor in the performance of corrective action.

Section 2. Applicability. This administrative regulation sets criteria for being certified as a contractor, including the following:

(1) Technical competency and proficiency in the performance of corrective action.

(2) General knowledge of 401 KAR Chapter 42: and

(3) General knowledge of health and safety standards.

Section 3. Certified Contractor Requirements for Reimbursement. (1) For an application for assistance approved after March 1, 1995, a person who contracts to perform or supervise corrective action shall be certified by the cabinet to be eligible for reimbursement. (2) For an application approved after March 1, 1995, the cost for an action performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if it is reasonable and necessary and if the action is:

(a) Performed or supervised by an individual who is certify by the cabinet; and

(b) In compliance with 401 KAR Chapter 42.

A certified contractor shall perform or supervise corrective action such as site checks, site investigations, and preparation and implementation of corrective action at facilities [plans], in accordance with 401 KAR Chapter 42.

(3)(a) To be eligible for reimbursement from the cabinet [fund], a person who contracts to perform corrective action shall, prior to incurring costs [fee], notify the cabinet and the owner or operator of the facility, in writing, of the name of the certified contractor designated to supervise the corrective action.

(b) If the certified contractor changes, a new notice shall be given.

(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 4. [3] Application Requirements. (1) An applicant for certified contractor shall:

(a) Submit to the cabinet a completed *Certified Contractor Application* [DEP 6072 (January 2009)] form;

(b) Submit verification of experience of participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; and

(c) Complete the examination requirement of this administrative regulation.

(2) An application to take the certified contractor examination shall be denied if the applicant:

(a) Fails to provide the information required by the application form; or

(b) Fails to comply with the experience requirements of this administrative regulation; or

(c) Makes a misrepresentation or submits false information in the application.

(3)(a) An applicant who has been assigned a testing date and time may request a change in the examination [testing] schedule by writing to the cabinet.

(b) If the request for a rescheduled examination [testing] date falls into another examination [testing] quarter, the applicant shall reapply to the cabinet.

(4) An applicant who wishes to retest [retest] the certified contractor examination shall reapply to the cabinet.

required for contractor certification is as follows:

(a) A person with a degree in the physical, life, or environmental sciences with two (2) years participation, as defined in Section 1(2) of this administrative regulation, in the performance of corrective action;

(b) A person without a degree in the physical, life, or environmental sciences with six (6) years participation, as defined in Section 1(2) of this administrative regulation, in the performance of corrective action; An applicant shall demonstrate participation in the performance of corrective action, as defined in Section 1(2) of the administrative regulation, at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the cabinet shall reduce the experience requirements of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) Registration in Kentucky as a professional engineer shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) Registration in Kentucky as a certified professional geologist shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 8. (6) Examination Requirements. Prior to the cabinet's approval of certification, an applicant for certified contractor shall pass a written examination administered by the cabinet.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of:

(a) Corrective action for a release from a petroleum storage tank system. The examination shall test the applicant's knowledge of codes, standards, statutes [laws], regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; and

(b) Applicable occupational health and safety and public health and safety requirements. The examination shall test the applicant's knowledge of codes, standards, statutes [laws], regulations, current technology, and industry recommended practices with respect to occupational health and safety and public health and safety; and

(c) The reporting requirements, documentation requirements and procedures of 401 KAR Chapter 42 (the cabinet). The examination shall test the applicant's knowledge of codes, standards, statutes [laws], regulations, current technology, and industry recommended practices with respect to occupational health and safety and public health and safety; and

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) The examination shall be given upon prior appointment with the cabinet (semiannually).

(4) The cabinet shall have a minimum of fourteen (14) calendar days to review the application and schedule (An-application shall be laid on the cabinet at least ten (10) working days in advance of the testing date to take) the examination.

(5) The cabinet shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. The instructions shall refer the applicant to relevant statutes, regulations, and industry publications.

(6) Each examination shall be graded and the applicant notified of the result upon completion of the examination (within fifteen (15) working days).

(7) Contractors who fail the examination shall be allowed to retake the examination no sooner than thirty (30) days from the previous examination date.

(b) Examination papers shall not be returned to or reviewed by the applicant.

(e) An applicant may review his test response sheet by appointment.

(8) The cabinet shall furnish the applicant with instructions for taking the examination, upon receipt of a completed application. The instructions shall refer the applicant to relevant laws, regulations, and industry publications.

Section 7. (5) Certification and Renewal Procedures. (1) The cabinet shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed two (2) years from the date of certification (biannually).

(2) An application for renewal shall be submitted to the cabinet on the "Certified Contractor Application", DEP 6072, (January 2006) [for Renewal form].

(3) The certified contractor shall be responsible for renewing the certification prior to expiration. Certified contractors who fail to apply for renewal prior to expiration, shall have thirty (30) days from the date of expiration to submit the required renewal application. Contractors who fail to submit the renewal application shall retake the examination in order to renew certification.

(4) The certificate shall not be renewed if an applicant:

(a) Fails to provide the information required by the "Certified Contractor Application", DEP 6072, (January 2006) [for Renewal form]; or

(b) Makes a misrepresentation or submits false information in the application [for renewal]; or

(c) Failed to participate in or supervise [a] corrective action during the two (2) year period prior to renewal;

(e) Failed to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 401 KAR 42-335.

(5) The cabinet shall require that a certified contractor pass a written examination to renew a certification if there has been a significant change, since the date of original certification, in the statutes, regulations [law], code, or industry recommended practices with respect to performing corrective action and the reporting and documenting requirements that are to be submitted to the cabinet. The cabinet shall notify certified contractors who are given an updated examination has been finalized.

(6) An applicant denied the opportunity to take the certification examination or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100.010.

(b) A professional engineer, or certified professional geologist, registered in Kentucky, shall be exempt from the reexamination requirement of paragraph (a) of this subsection.

Section 8. (7) Revocation or Suspension of Certification. (1) The cabinet [secretary] shall revoke or suspend a certificate issued pursuant to this administrative regulation if the certified contractor:

(a) Negligently, incompetently, recklessly or intentionally violates a provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action;

(b) Recklessly or intentionally causes or permits a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet,

(c) Obtains the certification through fraud or misrepresentation;

(d) Fails to perform a corrective action in a manner consistent with state and federal statutes [law] and regulations for safety or corrective action, or fails to perform a corrective action consistent with generally acceptable professional standards; or

(e) Knowingly or intentionally submits false information, documentation or payment request to an owner, an operator, or the cabinet.

(2) The cabinet [secretary] shall send written notice to a contractor whose certificate has been suspended or revoked.

(3) A person whose certificate is suspended or revoked may appeal by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100.010, 401 KAR 42-335.

Section 9. (8) Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the cabinet in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstance. The notice shall provide the (following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The cabinet shall evaluate the qualifications of the designated interim contractor and shall notify the company of its deter-
VOLUME 32, NUMBER 11 – MAY 1, 2006

mination, in writing, within fifteen (15) days of receipt of the company's notice. The cabinet shall:
(a) Approve [or deny] the company's request for designation of the interim contractor for a period not to exceed six (6) months and specify conditions appropriate to the facility and the interim contractor's qualifications; or
(b) Deny the request.
(3) No individual company shall engage an interim contractor for more than six (6) months within a twelve (12) month period; and
(b) Specify conditions appropriate to the facility and the interim contractor's qualifications.

Section 10. Incorporation by Reference. [7-11-1] "Certified Contractor Application", DEP 8072, (January 2006) is (The following forms are) incorporated by reference:
(a) "Certified Contractor Application Form (June 1996)"; and
(b) "Certified Contractor Application for Renewal Form (June 1996)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601. Public hearing and public comment period: A public hearing on this administrative regulation shall be held on May 6, 2006 at 10 a.m. (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Merce Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing date, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to attend at the public hearing or written comments on the proposed administrative regulation to the contact person.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Merce Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing date, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to attend at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-6049, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes criteria to obtain certification to contract and perform corrective action for a release from a petroleum storage tank.
(b) The necessary of this administrative regulation: This administrative regulation is necessary to establish certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank. This is required to receive reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEA).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrational regulation will assist by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will simplify the examination requirements and update the incorporated materials. The amendment is necessary to simplify the examination requirements and update the incorporated materials.
(b) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.
(c) How the amendment will assist in the effective administration of the statutes: This amendment will assist by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.

(3) The necessity of the amendment to this administrative regulation: This amendment is necessary to simplify the examination requirements and update the incorporated materials.

(4) Provide an assessment of the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment updates the incorporated materials for UST systems. The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs associated with implementation of this administrative regulation.
(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-145.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owner and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate USTs.
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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-120(o) authorize the promulgation of 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 (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:318. Certification of contracting companies.

RELATES TO: KRS 224.60-130(3), (4), 224.60-140
STATUTORY AUTHORITY: KRS 224.60-130(1)(a) [69(a)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) [69(a)] requires the establishment of [fund-reimbursement] eligibility criteria for the certification of partnerships and companies that engage in corrective action. This administrative regulation establishes criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 1. Applicability. This administrative regulation establishes criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 2. Certification Requirements. (1) A person who contracts with an eligible owner or operator to perform corrective action shall be certified by the cabinet. The cost of corrective action performed by a person not certified shall not be reimbursable.

(2) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet [fund], the person shall:

(a) Employ [contract-with] one (1) or more individuals certified by the cabinet pursuant to 401 KAR 42.314;

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Demonstrate to the cabinet the technical, administrative and financial capability to perform and manage corrective action at an underground storage tank facility; and

(d) Be approved in writing by the cabinet as certified to perform corrective action services in Kentucky.

This requirement shall apply to corrective actions initiated [applications for assistance submitted to the cabinet] on or after July 1, 1999.

(4) An authorized representative [representative or principal] of a certified company shall sign an application or claim payment request in addition to [submitted to the fund by, or on behalf of] the eligible owner or operator. The certified company shall certify that:

(a) The information or payment request has been reviewed and is true and correct; and

(b) Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR Chapter 42.

Section 3. [2.] Application Requirements. (1) An applicant for company certification shall submit:

(a) A completed "Certified Company or [and] Partnership Application", DEP 6073, [January 2006] [Form];

(b) Verification of the employment [contract-with] of one (1) or more individuals certified pursuant to 401 KAR 42:314;

(c) As references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 401 KAR 42:314; and

(d) A list of the names and address of officers and principals of the applicant, and if applicable, a list of all stockholders.

(2) Cabinet staff may inspect facilities of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) [ae] The cabinet may require additional information and documentation if necessary to determine the applicant's capabilities.

[b] The request for additional information and documentation shall be made by certified mail.

[c] The applicant shall submit the additional information within thirty (30) days of receipt of the request.

(4) An application for certified company status shall be denied if the applicant:

(a) Fails to provide the information requested in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

(c) Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(d) Fails to allow the cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335 [except its facilities];

(e) Fails to provide additional information and documentation requested by the cabinet;

(f) Fails to demonstrate the technical, administrative and financial capability to perform and manage corrective action at underground storage tank facilities;

(g) Provides false or misleading information in the application;

(h) Has an officer, director, principal, or stockholder who has had a certification, granted pursuant to 401 KAR 42:314, revoked or suspended;

(i) Has an officer, director, principal, or stockholder who was an officer, director, principal, or stockholder in a certified company, previously having had its certification revoked or suspended;

[i] Fails to maintain general professional liability insurance and pollution/cautious coverage.

(5) An applicant whose application for certification is denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100:10 [42:920].

(6) The cabinet shall issue a certificate to a qualifying applicant, indicating certification pursuant to this administrative regulation. [A certificate shall be renewed biennially.]

Section 4. Certification and Renewal Procedures. (1) The cabinet shall issue a certificate to each company that successfully complies with this administrative regulation. The certificate shall be renewed two (2) years from the date of certification. The certified company shall be responsible for renewing certification prior to expiration.

(2) An application for renewal shall be submitted to the cabinet on the "Certified Company or Partnership Application", DEP 6073, [January 2005].

(3) Actions performed by a certified company, under contract with an owner or operator, that fails to renew its certification shall be ineligible for reimbursement of corrective action costs incurred after the expiration date.

Section 5. Revocation or Suspension of Certification. (1) A certification issued pursuant to this administrative regulation shall be revoked if the certified company:

(a) Or its employee or agent knowingly submits false information, documentation, or a false payment request to an owner, operator, or the cabinet;

(b) Has permitted an employee, agent or subcontractor to violate a provision of 401 KAR Chapter 42, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;

(c) Has failed to comply with the terms set forth in 401 KAR 42:335; or

(d) Has neglectedly, incompetently, recklessly or intentionally violated a provision of this chapter or a required federal, state or local regulation, code or standard relating to corrective action;

(e) Has obtained the certification through fraud or misrepresentation; or
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(1) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The cabinet [secretary] shall issue a letter by certified mail notifying a noncompliant certified company that its certification has been revoked or suspended by action of the cabinet.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, and 401 KAR 100.010 (43-320).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excepting state holidays and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
for LaJunsa Wilcher, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 North Broadway, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006.

Written comments shall be accepted until May 31, 2006. Written comment notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716; fax (502) 564-0440; email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities. This is required to receive reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAR).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the criteria for certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the certification criteria for companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment reflects the cabinet reorganization, changes certification renewal procedures, and updates incorporated material.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the cabinet reorganization and make changes to the regulation that will update the program.

(c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the certification criteria for companies who contract and perform corrective action for a release from a petroleum storage tank.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by establishing the certification criteria for companies who contract and perform corrective action for a release from a petroleum storage tank.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky. Approximately 13,400 UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment updates the incorporated materials for UST systems. The cabinet expects no significant impact from this amendment.

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

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the collection of the petroleum environmental assurance fee as described in KRS 224.60-145. No additional funding will be required.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

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 may affect local governments that own or operate USTs.

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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-120(a) authorize the promulgation of 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.
ENVIRONMENTAL AND PUBLIC PROTECTION CabiNET
Department for Environmental Protection
Division of Waste Management (Amendment)


RELATES TO: KRS 224.60-105, 224.60-130(1)(a) (2)(e)), (b), 224.60-140, 40 C.F.R. 280 Part H

STATUTORY AUTHORITY: KRS 224.60-130(1)(c) (2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) (2)(f) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure [tank system removal]-KRS 224.60-130(2)(a) and (b) -require the agency to promulgate administrative regulations to administer the fund. This administrative regulation establishes the eligibility requirements and rates for the reimbursement for the Small Owners Tank Removal Account (SOTRA).

Section 1. Applicability. The provisions of this administrative regulation shall apply to [that close-of] petroleum storage tank owners meeting the requirements of Section 2 of this administrative regulation previously designated by federal law-40 C.F.R. 280 Part H, as required to remove or upgrade the facility's tanks or before December 31, 1998.

Section 2. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed "SOTRA Application for Assistance", DEP 6057, (January 2006). An owner shall be eligible for reimbursement under this regulation if:

(a)(4) The petroleum storage tank owner demonstrates full or partial interest in ten (10) or fewer tanks and the facility is located on or before December 31, 1998.

(b) [text]
(c) [text]

(d) An individual who:
1. Has a five-(5)-year average adjusted gross income of $50,000 or less; and
2. Owns full or partial interest in ten (10) or fewer tanks;

(b) A partnership that:
1. Has a five-(5)-year average adjusted gross income of $50,000 or less; and
2. The members of the partnership own full or partial interest in a total of ten (10) or fewer tanks;

(c) A corporation that:
1. Has a five-(5)-year average total income of less than $50,000, and
2. The shareholders of the corporation own full or partial interest in a total of ten (10) or fewer tanks; or

(d) A for-profit corporation; or

(e) An owner who is not a for-profit corporation;

(f) The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuel;

(g) The tanks are registered with the Division of Waste Management, pursuant to KRS 224.60-105 and 401 KAR 42:020;

(h) The owner certifies that:
1. The retail sale or wholesale distribution of motor fuel at the facility will permanently cease upon permanent closure [removal] of the tanks; and
2. All known tanks at the facility are being removed or closed in place; and

(i) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly-discovered underground storage tank system [(3) The discovery of a previously unknown or abandoned tank shall not affect the eligibility of an otherwise eligible owner.

(4) A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(5) Federal and state-owned facilities shall not be eligible for reimbursement from the Small Owners Tank Removal Account.

Section 3. Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of actions required in 401 KAR 42:070, [for reimbursing the reasonable and necessary costs of:

(a) Removal and disposal of petroleum storage tanks containing motor fuel;
(b) Disposal of contaminated backfill or contaminated water if required by law, and

(c) Post removal or confirmation sampling required by the Division of Waste Management;

(2) The use of this account shall be limited as specified in KRS 224.60-130(1)(a).

(3)(a) If contamination requiring corrective action is found by an analysis sample, the owner of a facility shall be eligible for reimbursement of the cost of permanent closure [tank system removal], but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be governed by 401 KAR 42:050 [the office receives a notice from the cabinet requiring corrective action at the facility, the owner shall be reimbursed for tank system removal and his documents then transferred for review under the financial responsibility account, 401 KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270].

(4)(a) If expenditures from this account exceed $3,000,000 during any fiscal year, the cabinet may suspend further reimbursements from this account. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund.

(b) This determination shall be based upon legislatively-enacted budgets and associated appropriations. If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in five (5) or fewer tanks, the eligible corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401 KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270, to be ranked pursuant to 401 KAR 42:290. To qualify, the owner shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to the requirements of 401 KAR 42:290, 401 KAR 42:310 and 401 KAR 42:314.

(c) If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in six (6) to ten (10) tanks, the eligible corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401 KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270, ranked for priority in accordance with 401 KAR 42:290, Section 1(1)(b) of 401 KAR 42:290. To qualify, the owner shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to the requirements of 401 KAR 42:280, 401 KAR 42:310 and 401 KAR 42:314.

(d) If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in six (6) to ten (10) tanks, the eligible corrective action cost may be reimbursed from the cabinet's financial responsibility account, 401 KAR 42:260, or the petroleum storage tank account, 401 KAR 42:270, ranked for priority in accordance with 401 KAR 42:290, Section 1(1)(b) of 401 KAR 42:290. To qualify, the owner shall file an application for assistance in accordance with 401 KAR 42:280 and shall adhere to the requirements of 401 KAR 42:280, 401 KAR 42:310 and 401 KAR 42:314.

(e) If obligations from this account exceed $3,000,000 during any fiscal year, the secretary may suspend further obligations from this account. The suspension shall be in effect until the secretary determines that further obligations from this account will not threaten the solvency of the fund.

(b) This determination shall be based upon:
1. Funds received and expenditures,
2. Audits and reports,
3. Actuarial studies,
4. Projected revenues; and
5. Projections on the number of tanks to be removed.

(7) Obligations from this account shall cease on June 30, 2003.

Section 4. Application Procedure. (1) The owner shall file a
completed "Application for Assistance", DEP 6063, (January 2006), incorporated by reference in 401 KAR 42:250, [Tank Removal Agreement form] for participation in this account at least forty-five (45) days prior to the permanent closure (removal) of the tank or tanks. The owner shall also provide the following information:

(a) Verification of income level by copies of the previous five (5) years' income tax returns;
(b) [A copy of the Notice of Intent to Permanently Close Underground Tank System, filed with the cabinet;]
(c) Proof of tank registration with the cabinet;
(d) A copy of the contract with a tank remover who has been certified [approved] by the State Fire Marshal;
(e) A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the permanent closure [removal]; and
(f) Color photographs of the facility and the areas to be impacted by the permanent closure [tank removal].

(2) (a) Within 120 days of the receipt of a completed application, the cabinet will issue a letter setting forth the owner's eligibility status and the availability of funding for the closure of the petroleum storage tank [notifying the owner that:]
1. He is eligible and states the amount obligated for removal;
2. He is ineligible but that no funds are available for the remaining fiscal year or
3. The facility is not eligible for participation in this account.
(b) Permanent closure [Removal] of the tank system shall not begin until the cabinet has approved the application and established the reimbursable amount [obligation]. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 5. Permanent Closure [Removal] Costs. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars per gallon of tank capacity [removed] or the following table:

<table>
<thead>
<tr>
<th>Number of Tanks in Pit</th>
<th>Size of Largest Tank in Pit (gallons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3,100</td>
<td>3,101 to 10,000</td>
</tr>
<tr>
<td>Greater than 10,000</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>$3,000</td>
</tr>
<tr>
<td>2</td>
<td>$4,900</td>
</tr>
<tr>
<td>4</td>
<td>$7,900</td>
</tr>
<tr>
<td>5</td>
<td>$9,400</td>
</tr>
<tr>
<td>Each Extra Tank up to 10</td>
<td>$1,500</td>
</tr>
</tbody>
</table>

(2) In addition to the costs listed in subsection (1)(a) of this section [above], the cabinet shall reimburse a one (1) time amount off, which shall not exceed $2,500, for the preparation and submission of a Closure Assessment Report. This shall include the cost of preparing a [leak] classification guide, if required by the cabinet. The cabinet shall also reimburse a one (1) time amount of $350 for the mobilization and demobilization of equipment.

(3) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix value given for each pit, plus an amount allowed by subsection (3) of this section.

(2) The following costs shall be included in the costs listed in subsection (1)(a) of this section:
(a) Tank system removal, cleaning and disposal;
(b) Permanent closure [Removal] of twenty-five (25) feet of associated piping outside of the tank pit;
(c) Removal of the pump island and canopy;
(d) Drumming and disposal of cleaning material;
(e) Backfilling to return the excavation to grade. Additional backfill material may be reimbursed in accordance with subsection (3) of this section;
(f) Concrete or asphalt surface removal;
(g) Equipment and material necessary for the permanent closure [removal and closure of a tank system];
(h) Preparation of a permit if required for permanent closure or testing of a tank system [removal or testing];
(i) Excavation and loading of material;
(j) Collection of samples; and
(k) Labor charges relating to paragraphs (a) through (j) of this subsection.

(3) The costs of the following items, if necessary, will be added to the cost established in subsection (1)(a) of this section, subject to the ranges set forth in the "Contractor Cost Outline", (January 2006), incorporated by reference in 401 KAR 42:250. [Following items are not included in the cost matrix in subsection (1)(a) of this section. The cost, including labor, of these items, if reasonable, may be added to the matrix value if necessary to achieve closure]:
(a) Surface replacement;
(b) Transportation, disposal and replacement of contaminated backfill;
(c) Disposal of asphalt surface material;
(d) Installation of up to three (3) monitoring wells, as required by 401 KAR 42:070 [If allowed, content required by law]. The cost of additional wells may be added if the additional wells are required in writing by the cabinet. An additional lump sum of $500 shall be allowed for planning and reporting of the well installation and sampling;
(e) Disposal or recycling of tank content or waste;
(f) Removal, transportation and off-site disposal of water, if required by law; [and]
(g) [Laboratory analysis, to the extent required; and by law.] [Optional soil removal outside of the excavation zone in accordance with Section 2.7 of the "Closure Outline". (January 2006), incorporated by reference in 401 KAR 42:070.]

(4) Costs in this section shall be subject to the ranges set forth in 415 KAR 1:110.

Section 6. Claims. (1) To receive reimbursement, an owner shall submit a completed "SOTRA Claim Request", DEP 6068, (January 2006). [Claim Payment Request for Tank Removal form at the time it receives a notice from the cabinet that:
(a) No further action is necessary; or
(b) Corrective action is required.
(c) In addition to the completed claim form, the owner shall submit the required documentation in accordance with the "Contractor Cost Outline", (January 2006), incorporated by reference in 401 KAR 42:250 (following in support of the request);
(e) The Closure Assessment Report;
(f) Original invoices in support of costs claimed under Section 6(3) of this administrative regulation; and
(g) A copy of the notice in subsection (4) of this section.
(3) The cabinet shall review a claim request for the following:
(a) The number and size of tanks removed; and
(b) Verification of eligible costs [preparatory costs from Section 5(3) of the administrative regulation, and
(c) The necessity and reasonableness of the costs claimed under Section 5(3) of this administrative regulation; and
(d) To receive reimbursement, an owner must have paid all annual tank fees as required by KRS 224 60-150.
(e) The cabinet may [shall] request additional supporting documentation [if necessary] to verify the reasonableness or necessity of a cost
(f) Reimbursement is contingent upon determination by the cabinet that the report required is complete and meets the requirements of 401 KAR 42 Chapter 42.

[If circumstances necessitate the closure in place of a tank, rather than its removal, the cost incurred may be reimbursed. The owners bear the burden of showing the necessity and cost-effectiveness of closure in place versus tank removal.]

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "SOTRA Application for Assistance", DEP 6067, (January 2006); and
(b) "SOTRA Claim Request", DEP 6068, (January 2006) [Application for Tank Removal Assistance (October 1998), Public Protection and Regulation Cabinet];
(c) Claim Payment Request for Tank Removal (October 1998), Public Protection and Regulation Cabinet;
(d) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky
40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may also be obtained on the Division of Waste Management’s Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LAUIANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capitol Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2006. 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reily Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4048, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility requirements and rates for reimbursement from the SOTRA.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the requirements and rates for SOTRA as described in KRS 224.60-130(1)(d).
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements and rates for SOTRA described in KRS 224.60-130(1)(d).

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment reflects the cabinet’s reorganization, inserts language that indicates the cabinet can suspend further reimbursements in response to legislatively enacted budgets, and updates the incorporated materials.
   (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the cabinet’s reorganization and update the incorporated materials.

3. How the amendment conforms to the context of the authorizing statutes: The authorizing statutes do not speak specifically on how the cabinet shall create or reimburse individuals from the Small Owners Tank Removal Account. This amendment alters the language that addresses this information.

4. How the amendment will assist in the effective administration of the statutes: This amendment updates information related to SOTRA in order to reflect current practices and procedures.

5. List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

6. 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 may be impacted if there is a loss in funding to SOTRA. This could result in suspension of reimbursements until the cabinet determines that further reimbursements from this account will not threaten the solvency of the fund.

7. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no costs associated with implementation of this administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

8. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-145.

9. Tiering: Is tiering applied? No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others. However, by statute, the SOTRA is established to inherently recognize the uniqueness of small business owners.

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 may affect local governments that own or operate USTs.
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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130(1) authorizes the cabinet to establish a Small Owners Tank Removal Account.
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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(022-42-335, Financial audits)

RELATES TO: KRS 6187(1)(c), 224.60-130(1)(d) (2)(4)(9), 0. (k), 224.60-140(2)(a), (e)

STATUTORY AUTHORITY: KRS 224.60-130(1)(e) (3)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60
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130(1)(a), (2)(d)(4) requires the establishment of the policy, guidelines, and procedures to perform a financial audit of an owner or operator receiving reimbursement for corrective action services from the cabinet [fund], or of an entity who contracts or subcontractors for corrective action services at a facility whose owner or operator is eligible for [fund] reimbursement. This administrative regulation establishes procedures for audits and the penalties for noncompliance.

Section 1. An entity shall be subject to financial audit if it is an entity described in KRS 224.60-130(1)(k) [2(3)(h)].

Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if:

(a) A document it is required to submit to the cabinet appears to be fraudulent; or

(b) There is evidence or other reason to believe that the entity has violated a federal or state law or regulation related to its actions [under-the-fund].

(2) A record shall be subject to financial audit if it is described in KRS 224.60-130(1)(k) [2(3)(i)].

(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit.

(b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be rescheduled more than thirty (30) days after the date of the original audit.

(c) (a) If the owner or operator fails to maintain records as required by KRS 224.60-130(1)(k) [2(3)(i)], the cabinet shall recover money reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible contractor or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k) [2(3)(i)], the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at the facility. If the entity is certified under 401 KAR 42.316, that certification shall be revoked or suspended in accordance with 401 KAR 42.316, Section 5[3].

Section 3. Improper Use of Reimbursements [Fund—Resources]. (1) If the audit by the cabinet finds an improper, irregular, or illegal use of money received directly or indirectly from the cabinet [fund], or that the money was obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.

(2) If the subject of the audit is certified pursuant to 401 KAR 42.314 or 401 KAR 42.316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money received directly or indirectly from the cabinet [fund], or that the money was obtained by fraud or misrepresentation, the cabinet shall immediately revoke the certification in accordance with 401 KAR 42.314, Section 7[7], or 401 KAR 42.316, Section 5[3].

(a) Failure by an owner or operator to allow an audit shall render the petroleum storage tank owner or operator ineligible for reimbursement [prehibit the owner or operator from participating in the fund]. Reimbursements [Fund—money—paid] to the owner or operator shall be subject to recovery by the cabinet.

(b) Failure by a person certified pursuant to 401 KAR 42.316, or a supplier, provider, contract employee, or subcontractor of that person, to allow an audit shall result in the revocation of that certification. Reimbursements [Fund—money—paid] to that person, pursuant to a contract for a corrective action service, shall be subject to recovery by the cabinet.

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone: (502) 564-0716, fax (502) 564-4048, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation details information related to financial audits and the penalties for noncompliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for financial audits and the penalties for noncompliance.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the authorizing statutes by establishing the procedures for financial audits and the penalties for noncompliance, as described in KRS 224.60-130 (1)(k).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation presents information related to financial audits which is a requirement for receiving service at 401 KAR 42.314.

(2) If 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 makes minor revisions to the general language within this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment introduces changes that will make this administrative regulation conform to the amendments occurring in other regulations within 401 KAR Chapter 42.

(c) How the amendment conforms to the context of the authorizing statutes: This administrative regulation makes minor alterations to the language that will result in consistency within 401 KAR Chapter 42.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation makes minor changes to the regulation, which will assist in the effective administration of the statutes by allowing 401 KAR 42.335 to conform with the rest of 401 KAR Chapter 42.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet expects no significant impact from this amendment.

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

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Im-
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implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-145.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others.

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 may affect local governments that own or operate USTs.
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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130(1)(f) authorize the promulgation of 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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.
Expenditures (+/-): No effect.
Other Explanation: The cabinet expects no significant impact from this amendment.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Exempt)

401 KAR 42:340. Laboratory certification.

RELATES TO: KRS 224.60-110, KRS 224.60-130, KRS 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(1)(a)(g)(e); KRS 224.60-130(1)(a)(g)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a)(g)(e) requires the establishment of criteria to certify laboratories that contract with owners or operators of petroleum [underground] storage tanks to perform analytical testing [testing related to Kentucky's underground storage tank program]. This administrative regulation establishes the requirements for certification and the parameters and methods on which certification shall be granted.

Section 1. Applicability. (4)(a) A sample required by 401 KAR Chapter 42 shall be submitted to a laboratory certified pursuant to this administrative regulation. This administrative regulation shall apply to analytical testing performed on or after October 1, 1999. An owner or operator of a petroleum [underground] storage tank [system] who fails to comply with this requirement shall not be reimbursed by the cabinet [fund] for costs related to analytical testing and corrective action.

(b) This administrative regulation shall not apply to a site for which the cabinet approved an Application for Assistance, pursuant to 401 KAR 42:280, prior to October 1, 1999, unless further anal-

lytical testing of a sample is required by the cabinet after October 1, 1999.

Section 2. Certification Requirements. (1) A laboratory shall demonstrate current accreditation by:
(a) The American Association for Laboratory Accreditation for the "Kentucky Underground Storage Tank Laboratory Accreditation Program";
or
(b) Any state approved to accredit environmental laboratories to perform certain tests in accordance with National Environmental Laboratory Accreditation Program requirements and standards, the following tests, in accordance with National Environmental Laboratory Accreditation Program requirements and standards:
1. Benzene, toluene, ethylbenzene, xylene, and methyl tertiary butyl ether (BTX, MTE) in soil and water;
2. Polynuclear aromatic hydrocarbons in soil and water;
3. Total recoverable oil and grease in soil and water;
4. Total lead in soil and water;
5. [6]Toxic characteristic leaching procedures (TCLP) for:
   a. Metals;
   b. Volatiles;
c. Acid/base/reactives;
d. Pesticides and herbicides;
6. Ignitability;
7. [7]Paint filter test; and
8. pH.
(2) A laboratory seeking certification from the cabinet shall submit, to the cabinet, a completed "Application for Laboratory Certification", DEP 6074, (January 2006) ["Laboratory Certification Application"]. The application shall include proof of accreditation as described in subsection (1) of this section.

(3) The cabinet shall reimburse an underground storage tank owner or operator for the cost of a laboratory analysis if the:
(a) Analysis is conducted in accordance with the established parameters and methods;
(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42 [state law or administrative regulation]; and
(c) Laboratory is certified by the cabinet to conduct that analysis.

Section 3. Renewal of Certification. A certification shall be valid for two (2) years from the date of issuance by the cabinet. To apply for renewal an applicant for renewal shall submit:
(1) An "Application for Laboratory Certification", DEP 6074, (January 2006) ["Laboratory Certification Application"]; and
(2) Updated documentation demonstrating accreditation by the:
(a) American Association for Laboratory Accreditation; or
(b) National Environmental Laboratory Accreditation Program.

Section 4. Loss of Certification. (1) The cabinet may revoke or suspend a certification if the applicant:
(a) Negligently, incompetently, recklessly, or intentionally violates any provision of this administrative regulation, or any state, federal, or local statute, regulation, code or standard concerning the performance of analytical testing;
(b) Obtains the certification through fraud or misrepresentation; or
(c) Knowingly or intentionally submits false information to owners, operators, contractors, or the cabinet [fund].
(2) A certified laboratory shall maintain certification by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for [during] the duration of certification.

(3) The cabinet shall, within ten (10) days of this [the] determination, notify a laboratory, in writing, of the suspension or revocation of certification.

(4) A laboratory seeking to dispute revocation or suspension shall appeal that decision pursuant to KRS 224.60-140, KRS 224.60-440, and 401 KAR 100.010 [401 KAR 42:220].

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

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(a) "Application for Laboratory Certification", DEP 6074, [January 2006] [The Office of the Petroleum Storage Tank Environmental Assurance Fund—Laboratory Certification Application] (January, 1999); Public Protection and Regulation Cabinet; The American Association for Laboratory Accreditation, "Kentucky Underground Storage Tank Laboratory Accreditation Program Requirements", (September 2000);* (July 1999); National Environmental Laboratory Accreditation Program (NELAP); Recognized Accrediting Authorities; and (d) Address of the American Association for Laboratory Accreditation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m. excluding state holidays and may also be obtained on the Division of Waste Management's Web page located at www.waste.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LAJUANA WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2006 5 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mario Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. No no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who 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 this hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-8716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bruce Scott

1. Provide a brief summary of:
   (a) What the administrative regulation does; This administrative regulation establishes the requirements for laboratory certification, including the parameters and methods on which certification is granted.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for laboratory certification and the parameters and methods on which certification will be granted.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing a laboratory certification program, as required in KRS 224.60-130.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the requirements for laboratory certification program described in KRS 224.60-130.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment updates incorporated material and deletes the requirement for an oil and grease analysis.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to delete unnecessary requirements and update the incorporated material.
   (c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-130 requires the cabinet to promulgate administrative regulations to certify laboratorones. This amendment simply deletes an unnecessary requirement and updates information pertaining to laboratory certification.
   (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation adjusts the laboratory certification requirements in order to remain current.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate petroleum underground storage tanks in the Commonwealth of Kentucky, approximately 13,400, UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. The cabinet expects no significant impact from this amendment.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no costs associated with implementation of this administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224 60-145.

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

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

9. TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others.

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 may affect local governments that own or operate USTs.

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 relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130 authorize the promulgation of 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 this administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.
Expenditures (+/-): No effect.
Other Explanation: The cabinet expects no significant impact from this amendment.
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.554(1), 17.564
NECESSITY, FUNCTION, AND CONFORMITY. KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).
(2) "Board" is defined by KRS 17.550(1).
(3) "Comprehensive sex offender presence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).
(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.
(5) "Sex crime" is defined by KRS 17.500(6).
(6) "Sex offender" is defined by KRS 17.550(2).
(7) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a sex crime. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian, or court-appointed special advocate. If the victim is deceased, and the relation is not the defendant, the following relations shall be designated as "victim":
(a) The spouse;
(b) An adult child if paragraph (a) of this subsection does not apply;
(c) A parent, if paragraphs (a) and (b) of this subsection do not apply;
(d) A sibling, if paragraphs (a) through (c) of this subsection do not apply; and
(e) A grandparent, if paragraphs (a) through (d) of this subsection do not apply [as defined by KRS 421.600(4)].

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.550(3):
(1) Have completed forty (40) hours of specialty training provided or approved by the board under Section 8 of this administrative regulation including the following:
(a) Characteristics and offense patterns of sex offenders;
(b) Treatment modalities used with sex offenders;
(c) Legal and ethical issues in the risk assessment of sex offenders;
(d) Victim's issues, not to exceed two (2) hours of credit against the total requirement;
(e) Issues related to the assessment of juvenile and female sex offenders; and
(f) Use of the appropriate actuarial or evaluation instruments;
(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(3) Have a minimum of two hundred (200) hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
(a) Sixty (60) hours documented experience conducting sex offender evaluations or complete a practicum as described in Section 6 of this administrative regulation; and
(b) 190 hours documented clinical contact conducting sex offender treatment or complete a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.
(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presence evaluation for personal financial gain for the sex offender for six (6) months following the treatment.
(3) An approved provider shall:
(a) Submit the first four (4) evaluations prepared after becoming certified as an approved provider for review by the board;
(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(c) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.

1. The board may grant an extension of six (6) months in which to complete hours of continuing education upon request for good cause shown. To request an extension, an approved provider shall:
(a) Submit a plan detailing how the uncompleted hours will be obtained within the next six (6) months, if a plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years;
(b) Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and
(c) State the reasons for the request for extension.
2. The request shall:
(a) Be in writing;
(b) Include the number of hours that need to be completed for the calendar year;
(c) Include proof of any hours that were completed; and
(d) Be postmarked on or before December 31 of the calendar year for which the hours were required.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.
(2) An individual may apply to the board for approval status as an approved provider by submitting:
(a) A written request for approval, which shall include the following:
1. Full name;
2. Business address;
3. Home address;
4. Daytime telephone number;
5. Fax number, if available; and
6. Social Security number;
(b) Documentary evidence of his qualifications; and
(c) Evidence that he has remedied the cause for the denial or revocation, if approval was previously [re] denied or revoked under Section 5 of this administrative regulation.
(3) The board shall determine that an application is incomplete if:
(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;
(b) The board is unable to verify the authenticity of the documentation of qualifications; or
(c) Any of the information required in subsection (2) of this section is not submitted.
(4) The board determines that an application is incomplete, the board shall notify the applicant additional documentation or information that is required or identify the information that cannot be identified.
(5) The board shall notify the applicant of its intent to approve
or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and

(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;

(b) Had a domestic violence protective order issued against him within the previous five (5) years;

(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;

(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status;

(e) An alcohol or drug abuse problem as defined in KRS 222.005(3);

(f) Falsified any information or documentation, or has concealed a material fact, in his request for approval;

(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;

(h) Three (3) or more evaluations which the board finds are below standard upon review;

(i) Failed to comply with the comprehensive sex offender presentation evaluation procedure established in 501 KAR 6:200;

(j) Shown an inability to [adequately] conduct an evaluation with reasonable skill;

(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent; or

(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;

(m) Failed to comply with an order of the board; or

(n) Failed to comply with instructions of the board during an investigation.

(2) The board may deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;

(b) Had a sanction applied against his mental health professional license or certification at any time in the past two (2) years;

(c) Failed to comply with the duties set forth in Section 3 of this administrative regulation;

(d) Less than three (3) evaluations that the board finds are below standard upon review;

(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;

(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200; or

(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and

(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

1. 500 hours conducting sex offender evaluations; and

2. 1,500 hours of clinical contact in sex offender treatment;

(b) Be an approved provider in good standing with the board;

(c) Submit a request to conduct a practicum for each participant to be approved by the board to conduct the practicum;

(d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;

(e) Examine and approve all comprehensive sex offender presence evaluations performed by the practicum participant; and

(f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 501 KAR 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:

(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;

(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;

(d) Participate in the practicum for a minimum of six (6) months; and

(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation; and

(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensing or certification board.

(2) The board may investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(3) Board staff may monitor the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;

(c) Direct observation of the evaluation or treatment of a sex offender, or

(d) Interviewing judicial, correctional, law enforcement officials or other individuals [agency personnel] that interact with an approved provider in relation to comprehensive sex offender presence evaluations or treatment of sex offenders.

(4) If an approved provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:

(a) Require the approved provider to submit a corrective action plan for approval by the board;
(b) Impose a corrective action plan; or
(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(5) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Education. (1) Specialty training.
(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;
(b) An applicant seeking approval of a specialty training course shall submit to the board the following:
1. A certificate of attendance which shall include the number of hours of training received; or
2. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received, and
3. [2.] An agenda from the training seminar that describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the training seminar or required by the board based on its nature or relevance;
(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:
1. A certificate of attendance that shall include the number of hours of education received; or
2. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
3. [2.] An agenda from the seminar, which describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.
(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;
(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:
1. A certificate of attendance that shall include the number of hours of education received; or
2. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
3. [2.] An agenda from the seminar, which describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

This is to certify that the Sex Offender Risk Assessment Advisory Board 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(5)(a) as reflected by the signature above.

JOHN D. REES, Commissioner
KATHI PETERSON, Psy.D., Chairperson
APPROVED BY AGENCY: March 16, 2006
FILED WITH LRC: April 13, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 9 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing 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 May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Amy V. Barker
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides the requirements for becoming an approved provider for treating and evaluating sex offenders through the Sex Offender Risk Assessment Advisory Board.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550, et. seq.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation states the approval process that the board is required to determine.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing direction to mental health professionals who desire to be approved providers who are authorized to provide court-ordered treatment for sex offenders.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment revises the definition of victim to delete portions of the definition that did not apply and adds reasons to revoke approval. It allows an additional method of a provider showing the completion of required hours of education.
(b) The necessity of the amendment to this administrative regulation: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary revocation of approval of providers.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation amends the approval process that the board is required to determine.
(d) How the amendment will assist in the effective administration of the statutes: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary revocation of approval of providers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 61 approved providers and the sex offenders that they treat or evaluate.
(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 approved providers will have to comply with orders and instructions of the board or risk revocation and may show that they obtained required education hours in an additional way.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(5) What is the source of 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Amendment)


RELATES TO: KRS 15.560
STATUTORY AUTHORITY: KRS 15 590
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 requires the Commissioner of the Department of Criminal Justice
Training to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications Academy - non-CJIS.

Section 1. Definitions. (1) "Academy" means the 128 [420] hour Telecommunications Academy course conducted by the department that does not include training on the Criminal Justice Information System (CJIS).

(2) "KLEC" means the Kentucky Law Enforcement Council.

Section 2. Academy Content. The academy shall consist of the following six (6) [five-(6)] areas:

(1) Basic telecommunications;

(2) Emergency medical dispatch;

(3) Cardiopulmonary resuscitation (CPR);

(4) Critical incidents; [and]

(5) Spanish for the telecommunicator; and-


Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

(a) Successfully complete a minimum of 128 [420] hours of KLEC-approved training;

(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:

1. Eighty (80) percent on the emergency medical dispatch written examination,

2. Eighty (80) percent on the CPR written examination, and

3. Seventy (70) percent on all other examinations for which a numerical score is assigned;

(c) Pass all examinations for which a pass or fail designation is assigned; and

(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and if required, they shall be successfully completed to pass the training area for which they were assigned.

(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section.

(3) To avoid unnecessary repetition of coursework:

(a) A telecommunicator who attends the Non-CJIS Telecommunications Academy and has previously successfully completed basic telecommunications or any other area of the Non-CJIS Telecommunications Academy, as established in Section 2 of this administrative regulation, shall:

(1) Receive credit for that training area; and

(2) Not be required to repeat that training area of the Non-CJIS Telecommunications Academy; and

(b) The Commissioner of the Department of Criminal Justice Training may, upon written request, award a certificate of completion to a law enforcement telecommunicator who has successfully completed all of the training areas that compose the Non-CJIS Telecommunications Academy.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

(2) A trainee who fails an examination shall not be reexamined:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than the last scheduled day of the academy.

(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repeat of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the Professional Development [in-service training] Branch manager or telecommunications training section supervisor.

(2) If an excused absence causes a trainee to miss any of the 128 [420] hours of the academy, the training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 160 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of the academy does not last for a period longer than one (1) year; and

(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. (1) If, while enrolled in the academy, a trainee's employment as a telecommunicator is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a telecommunicator.

(2) The trainee shall repeat the academy in its entirety if:

(a) The break in employment exceeds one (1) year; or

(b) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:

(1) Available to the KLEC and the Secretary of the Justice Cabinet for inspection or other appropriate purposes; and

(2) Maintained in accordance with KRS Chapter 171.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: March 17, 2006
FILED WITH LIRC: March 17, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 22, 2006 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2006, 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 May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (502) 622-3073, fax (502) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn
(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the guidelines and procedures for graduation from the Department of Criminal Justice Training (DOJ/IT) Telecommunications academy.

(b) The necessity of this administrative regulation: The regulation is necessary so that the Commissioner of the Department of Criminal Justice Training can fulfill his responsibility, as established in KRS 15.590, to promulgate administrative regulations necessary for the proper training of Law Enforcement Telecommunicators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations regarding telecommunications practices.
This administrative regulation is necessary to establish graduation requirements for the DOCJT Telecommunications academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent rules and procedures for graduation from DOCJT Telecommunications Academy.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add eight (8) hours of homeland security training to the current curriculum.

(b) The necessity of the amendment to this administrative regulation: This addition is necessary so that the Commonwealth will be in compliance with new federal requirements relating to the funding of Homeland Security. The federal Department of Homeland Security will require all grant recipients (state, county, municipal, and any other subdivisions) to complete the National Incident Management System orientation and certification program by the end of 2006. Kentucky is unique in its ability to standardize training for all peace officers and concurrently provide training that is uniform. The Commonwealth will be the first state in the union to achieve the milestones of all peace officers trained on this federal requirement by the end of 2006. This will afford Kentucky communities a distinct advantage over other states in their quest for limited federal assistance in the short-term and long-term.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations for training, in-service training, and telecommunications practices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit the telecommunications agencies and permit the Commissioner of the Department of Criminal Justice Training to fulfill his responsibilities.

(3) List the type and number of individuals, businesses, organizations, or states and local governments expected to be impacted by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT telecommunications academy training, which is presently approximately 200 agencies, including most state, county and local agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation or by the change, if it is an amendment: It is anticipated that agencies should be positively impacted due to the amendment of this administrative regulation in that they will be eligible for federal Homeland Security funding. The only negative impact will be the addition of 8 additional hours of training over the course of the 4 week academy.

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

(a) Initially: Cost of Implementation should be approximately $700,000. This total includes the costs of homeland security and additional training for the Department of Criminal Justice Training basic training course (503 KAR 1:110) and the CJIS Telecommunications Academy (503 KAR 3.050), the administrative regulations for which are being filed in conjunction with this administrative regulation.

(b) On a continuing basis: Approximately $125,000 per year. This total includes the costs of homeland security and additional training for the Department of Criminal Justice Training basic training course (503 KAR 1:110) and the CJIS Telecommunications Academy (503 KAR 3.050), the administrative regulations for which are being filed in conjunction with this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEPPF).

(7) Provide an assessment of whether an 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.

(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 regulation will affect. Local law enforcement agencies in the Commonwealth that utilize DOCJT telecommunications academy training, which is presently approximately 200 agencies.

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. KRS 15.585 requires a CJIS telecommunicator to successfully complete the Telecommunications Academy. On February 28, 2003 President Bush issued Homeland Security Presidential Directive-5 requiring National Incident Management System (NIMS) training and exercises. On December 7, 2004, Governor Ernie Fletcher signed an executive order for the Commonwealth of Kentucky, adopting the National Incident Management System.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

   Revenues (+/-): No effect.

   Expenditures (+/-): Other than paying compensation to telecommunications during the four week period that they are attending the Telecommunications Academy, this administrative regulation should have no effect on expenditures and revenues. The current overall length of the Telecommunications Academy is 120 hours over a period of 3 weeks. The amendment for Homeland Security training will add an additional 8 hours to the curriculum. However, the current overall 3-week schedule will not change. While telecommunications trainees are at Richmond participating in the DOCJT Telecommunications Academy, they are paid a salary from their employing agency. Depending on whether a trainee is paid a salary or hourly wage, an agency may be required to pay overtime or compensatory time for the eight hour increase.

Other Explanation: None

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

703 KAR 5:010. Writing portfolio procedures.

RELATES TO: KRS 158.6453
STATUTORY AUTHORITY: KRS 158.670, 158.6453
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio. This administrative regulation establishes procedures to accomplish that goal and establishes standards to ensure that writing portfolios are a valuable component of teaching and learning.

Section 1. Appropriate Use of Time. (1) A school and district shall implement practices that reduce teacher and student time in preparing a writing portfolio by implementing a vertically-aligned writing curriculum based on the Program of Studies, 704 KAR 3:303, using writing instruction (including writing to learn) across the curriculum and instructing students to make decisions regard-
in the use of the writing process.

2. A school shall allow for an appropriate amount of time for writing development throughout all grade levels and content areas. A classroom teacher shall limit the amount of time spent on a single portfolio entry and the number of revisions of a single writing portfolio entry.

3. Development of writing assignments shall not limit instruction of skills and concepts in content areas, but shall be designed to support and enhance a student's content knowledge.

4. Beginning in the 2006-2007 school year, a school or district shall not schedule a class for the sole intent of producing an accountability portfolio. Writing instruction shall serve as a component of literacy instruction and shall not be isolated for the purposes of state assessment and accountability.

5. A school shall implement practices that use time efficiently and comply with this administrative regulation.

Section 2: School and District Writing Programs. (1) A school shall provide writing instruction and authentic writing opportunities at all grade levels and shall develop a procedure to collect working folders that include writing pieces at nonaccountability levels for possible inclusion in the accountability portfolio. This writing shall allow all portfolio categories and the content areas being studied. A school shall not wait until the accountability year to test the types of writing appropriate for inclusion in the writing portfolio.

(2) A writing piece in the working folder may be revised or edited by the student for inclusion in the accountability portfolio or it may be used as a finished product and included in the accountability portfolio.

(3) A writing piece in a working folder shall comply with the Program of Studies, 704 KAR 3:030.

(4) A district shall assist schools in managing working folders by enabling transition from one school level to the next (elementary school to middle school to high school). When a student transfers to another school or district, the working folder along with the student's transcript shall be sent in a timely manner to the receiving school.

(5) A school shall identify a writing cluster leader for each writing portfolio assessment level at the school (grades 4, 7, and 12). The writing cluster leader shall be a lead teacher with experience in writing instruction and leadership skills but is not required to be a teacher from the assessment grade levels. The cluster leader shall not be an intern teacher.

(6) A school and district shall provide opportunity for teachers across the curriculum and across grade levels to engage in professional development focused on writing instruction across the content areas and the types of writing assessed in the portfolio. Professional development shall support a teacher's ability to link content to writing opportunities and shall assist teachers with facilitating the writing process of all students.

(7) A school council shall review the instructional needs of all programs when making decisions regarding use of resources. Adequate resources (for example, staff, extended school services, technology, space) shall be used to support the instructional needs of the school as determined by data collection and needs analysis.

Section 3: Writing Instruction. (1) A teacher-assigned writing task shall relate to standards-based units of study so that writing is relevant to and promotes learning in the content area. A teacher shall not assign writing that does not promote, support, or demonstrate learning in the content area being studied.

(2) A writing task shall link assignments and instructional practices to authentic situations with genuine opportunities for student choice in writing and for publication to real audiences in order to enable a student to develop as an independent writer and thinker.

(3) A teacher shall choose content-area readings that represent the kinds of writing the students are asked to include in the portfolio, allowing the integration of content and the discussion of writing form (for example, editorial, article, academic paper) to occur at the same time.

(4) A teacher shall allow time for instruction and use of the writing process (planning, prewriting, drafting, revising, editing, publishing, reflecting) in the classroom as part of instruction and may allow some students to work outside of class; however, portfolio pieces shall not be entirely completed at home or with no evidence of the writing process.

(5) A writing conference and a revision shall be directly linked to the skills being taught during the instruction of the writing assignment. A writing conference shall be used as an instructional tool to support a student's learning of particular skills associated with the writing assignment. A teacher may use individual, small group, or whole group conferencing sessions to address common patterns of errors (for example, literacy techniques, organizational problems, and confusion about conventions). A teacher and other conferencing partner shall limit a conference's focus to one (1) or two (2) areas of need, addressing patterns of errors or problems that occur frequently in an individual student's writing.

(6) A conferencing partner shall understand and be familiar with the writing needs of the student and shall address the instructional needs of the student during conferences but shall not take ownership of the student's writing process by requiring an arbitrary number of revisions. A teacher and other conferencing partners shall respect the individual student's preferences when encouraging revisions so that the student retains ownership of the work.

(7) A teacher or other conferencing partner may indicate the type and position of errors (for example, circle errors, highlight mistakes, put checks in margins of lines where errors occur) on student writing, however, a teacher and other conferencing partner shall not correct errors on papers that might be included in the accountability portfolio.

(8) A teacher shall allow students to use word processing during the development of writing pieces for example, during revision or editing; or allow students to submit handwriting. If a student uses a word processing program to produce the student's writing, all formatting shall be completed by the student unless otherwise allowed by the student's Individual Education Program (IEP) or Program Services Plan. If a student is not given access to technology during the writing process, the school shall not require that the entries in the accountability portfolio be word processed.

(9) The development of the writing portfolio shall not limit the use of a technology or media center as it is used to meet the needs of all students.

Section 4: Portfolio Design and Scoring. (1) Beginning with the 2006-2007 Commonwealth Accountability Testing System (CATS) assessment, a four (4) piece portfolio shall be produced in 12th grade, a three (3) piece portfolio shall be produced in 7th grade, and a three (3) piece portfolio shall be produced in 4th grade.

(2) A school and district shall implement procedures for scoring of student portfolios that include an adequate number of teacher scorers on the school scoring team to limit the number of portfolios scored by any one (1) teacher to fifty (50), unless a teacher agrees to score a larger number of portfolios.

(3) The classroom teacher primarily responsible for overseeing the completion of a student's writing portfolio shall not serve as a scorer of record for that student's accountability portfolio. (4) To ensure that a reasonable amount of time is devoted to writing portfolio development, a five (5) piece portfolio shall be produced in 12th grade, a five (5) piece portfolio shall be produced in 7th grade, and a four (4) piece portfolio shall be produced in 4th grade.

(5) To ensure that a reasonable amount of time is devoted to the production of writing portfolio pieces, schools and districts shall develop a procedure to collect writing pieces at nonaccountability levels that are appropriate types of writing for portfolio categories. These pieces may serve as rough drafts that can be revised and edited for inclusion in the accountability portfolio, or they may be used as finished products and included in the accountability portfolio.

(6) To ensure that the teacher and student time spent on generating pieces for the writing portfolio is productive, each public school and district shall develop procedures for ensuring that each portfolio
that include an adequate number of teacher scorers on the school scoring team to limit the number of portfolios scored by any one (1) teacher to thirty (30), unless teachers agree to score a larger number of portfolios.

(5) To ensure that a reasonable amount of time is used in conferencing on writing-portfolio pieces, teachers and other responders shall limit a conference to one (1) or two (2) or more episodes addressing patterns of errors or problems that occur frequently.

(6) To ensure that a reasonable amount of time is used in word processing final pieces, teachers shall allow students to use word processing during the development of writing pieces (for example, during revision, or editing) or allow students to submit pieces in their own handwriting.

(7) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teacher-assigned writing tasks shall relate to the content being studied in the class.

(8) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teachers shall choose content area readings that represent the kind of writing the students are asked to include in the portfolio, allowing the covering of content and the discussion of writing form to occur at the same time.

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: April 13, 2006
FILED WITH LRC: April 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on May 30, at 2 p.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 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 May 31. Send written notification of intent to be heard to the public hearing or written comments on the proposed administrative regulation to:

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 establishes procedures and standards to help schools allocate an appropriate use of time to writing portfolio development, to determine the components of a school and district writing program, to incorporate appropriate writing instruction across grade levels and content areas, and to develop and score writing portfolios for the Commonwealth Accountability Testing System.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement KRS 158.8453.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation clarifies ways in which schools can reduce teacher and student time in the preparation of writing portfolios for Kentucky's assessment system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidelines for schools to use when designing writing curriculum and instructional programs.

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

(a) What the amendment will change this existing administrative regulation. The amendment to this administrative regulation clarifies instructional practices that will reduce time devoted to writing portfolios, provide guidelines for the management of working folders, clarify the role of a writing conferencing partner, and outline the content requirements and scoring requirements of the writing assessment portfolio.

(b) The necessity of the amendment to this administrative regulation. Changes to the Writing Portfolio Procedures regulation are necessary due to design changes in the Kentucky writing portfolio and concerns from the field and from the Kentucky Board of Education regarding instructional practices.

(c) How the amendment conforms to the content of the authorizing statute: KRS 158.8453 requires that the Kentucky Board of Education promulgate a regulation that reduces teacher and student time involved in preparing a writing portfolio. The revisions to this regulation offer time-saving practices and strategies in addition to those included in the initial version of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: The Writing Portfolio Procedures regulation will assist schools as they work to develop and align writing programs that lead to the types of writing published in an assessment portfolio as well as writing to learn and writing to demonstrate learning. As schools incorporate the practices outlined in this regulatory revision, they will reduce instructional time as well as scoring time.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 school districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of the administrative regulation, if new, or by the change if it is an amendment: School districts will work with schools to confirm that all teachers and additional conferencing partners understand guidelines for appropriate conferencing strategies when working with student writers. School districts will assist schools in the management and transfer of working folders. Schools will develop and submit portfolios that adhere to the current testing guidelines.

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

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

(b) On a continuing basis: There will be no additional costs to the agency to implement this administrative regulation revision.

(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 fees will be necessary to implement this regulatory revision.

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

(9) TIERING. Is tiering applied? Tiering is not 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 3:303. Required program of studies.
RELATES TO: KRS 156.070, 158.160, 158.6451, 160.230
STATUTORY AUTHORITY: KRS 156.070, 158.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160
requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451. KRS 158.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the program of studies, which contains the general courses for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Program of Studies.

Section 2. Incorporation by Reference. (1) The "Program of Studies for Kentucky Schools, Grades Primary-12": April 2008 [28, 4058], last incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [document may be inspected and copied at the Division of Curriculum [and Assessment] Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.]

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 13, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 30, at 2 p.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 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 May 31. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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 incorporates by reference the "Program of Studies for Kentucky Schools Grades P-12", which contains the minimum content requirements across all content areas students shall meet before graduating from a Kentucky public high school.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation: Changes to the Program of Studies document are necessary due to changes to the minimum requirements for high school graduation.
(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451.
(d) How the amendment will assist in the effective administration of the statutes: The Program of Studies will assist schools in developing instructional courses primary through grade 12 that contain the minimum content required for high school graduation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 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: Districts will assist schools in aligning the educational programs in schools to meet the requirements in the Program of Studies.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional costs to the agency to implement this administrative regulation.
(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 fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)


RELATES TO: KRS 156.551, 156.553
STATUTORY AUTHORITY: KRS 156.553, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.553 authorizes the Kentucky Board of Education to promulgate an administrative regulation for administration of a Teachers' Professional Growth Fund. This administrative regulation establishes the application and approval process for receipt of funds, the requirements and process for distribution of funds, and the number and kind of approved programs and courses for which applicants may receive funds.

Section 1. Definitions [Definition]. (1) "Coach" means a teacher leader whose primary responsibility is to provide on-going support for one (1) or more teachers including improving teaching practices by working with teachers in their classrooms, observing and providing feedback to them, modeling appropriate teaching prac
licences, conducting workshops or institutes, establishing learning communities, and gaining appropriate and useful resources.

(2) "Mathematics diagnostic assessment" means an assessment as established in KRS 158.842(d).

(3) "Mathematics Intervention program" means a program as established in KRS 158.842(11)(e).

(4) " Mentor" means an experienced coach who typically works with beginning or novice teachers only.

(5) "Teacher of a core discipline" means a public [middle] school [(grades 6-8)] teacher of mathematics, science, language arts, or social studies in a self-contained or collaborative classroom or in a departmentalized setting, including career and technical [vocational] education teachers, and teachers of exceptional children and teachers of children with limited English proficiency.

Section 2. Certification of Approved Professional Development Providers. (1) [An approved provider for a core discipline shall meet the professional development needs of middle school teachers of that core discipline.

(2)] An approved provider may include:
(a) Teachers or university professors with expertise in the core discipline and the teaching of the core discipline;
(b) Schools;
(c) School districts;
(d) Colleges;
(e) Universities;
(f) Educational cooperatives;
(g) Professional development consortia; or
(h) Professional organizations.

(2) [A provider shall submit the following to the Kentucky Department of Education (KDE) for approval:
(a) A syllabus or outline of the course or professional development program offered by the provider, including available dates and times, if possible;
(b) A description explaining how the course or program meets the requirements as specified in KRS 156.553 and in 704 KAR 20:730, Section 3, related to experienced teacher standards;
(c) The qualifications of the instructor or instructional leader;
(d) An explanation of how the course or program will improve a teacher's knowledge of content, instructional practices and student learning in the core discipline; and
(e) Itemized costs for the course or program.

(3) [A university or college offering a course as defined by the Education Professional Standards Board in accordance with KRS 156.553(3) shall not be required to be certified as a provider in order for the [middle-school] teacher to be eligible for tuition reimbursement.

Section 3. Criteria for Eligible Activities. The fund may be used by teachers for participation in approved activities as specified in KRS 156 553(3).

Section 4. Funding priorities and processes for 2006 - 2010.

(1) Priority for the use of funds from the Teachers Professional Growth Fund from June 1, 2006, through the end of the 2009-2010 school year shall be:
(a) To train and support teams of teachers from all school levels as reading coaches and mentors (with priority for grades 4-12) in statewide institutes;
(b) To train and support teams of teachers from all school levels as mathematics coaches and mentors in all school levels in statewide institutes referenced in KRS 158 840 and 158 842;
(c) For selected teachers to be highly trained in providing diagnostic assessment and intervention services for students in the primary program struggling with mathematics; and
(d) Priorities for any remaining funds annually established by the Kentucky Board of Education consistent with KRS 156 553.

(2) Selection of statewide institute providers in mathematics and reading shall include the following:
(a) Approved professional development providers for mathematics coaches and mentors shall be determined by the Kentucky Department of Education based on recommendations from the Committee for Mathematics Achievement as referenced in KRS 158 842; and

(b) Approved professional development providers for reading coaches and mentors shall be determined by the Kentucky Department of Education based on recommendations from the Collaborative Center for Literacy Development and the Reading Steering Committee under KRS 156 553(3).

(3) Local school districts, colleges, universities, and other entities may apply for grants to accomplish the purposes outlined in KRS 156 553(2) and (3).

(4) Criteria for Eligible Activities. The fund may be used by local school districts, colleges, universities, other entities, and selected teachers for participation in approved activities as specified in KRS 156 553(2) and (3). Application process. (1) Priority for funding for the 2006-2007 and 2007-2008 school years shall be given to public middle schools (grades 6-8) teachers of mathematics. A public middle school core discipline teacher may submit an application which can be downloaded from the Kentucky Department of Education website.

Section 5. Application Process For Teachers Professional Growth Fund Activities Other Than Those Described in Section 4(1)(a)–(c).

(1) [Fall semester activities shall be completed by December 31, spring semester activities shall be completed by May 31, and summer activities shall be completed by August 15.]

(2) [An application shall include the following:
(a) Proposed coursework from an approved provider, or an approved professional development program;
(b) Certification from the principal that the teacher is employed or will be employed as a middle school teacher with responsibility for teaching in the core discipline, and that the teacher's plan is consistent with the teacher's individual growth plan or the school's consolidated plan;
(c) An explanation of how the proposed activities will improve the teacher's knowledge of the content area, instructional practices and student learning;
(d) A budget not to exceed $2,500 with an explanation of proposed expenditures; and
(e) The signature of the school district superintendent or designee indicating that necessary human and financial resources to support the application are available, if applicable.

(3) [If a teacher applicant requests to access these funds for the purpose of pursuing the continuing education option for rank change established in 704 KAR 20:022, then the teacher shall submit a copy of the letter from the Education Professional Standards Board stating that the teacher has been accepted as a candidate for this program. The acceptance letter shall establish the teacher as the approved professional development provider required under Section 2 of this administrative regulation.

(4) [If a teacher's plan involves an unapproved provider, the teacher shall include an application form for this program in Section 2(3) of this administrative regulation to be considered for approval.

(5) [The application may be submitted for approval to the Department of Education electronically by the teacher or through the district professional development coordinator. A superintendent's approval also may be submitted electronically.

(6) [The budget for an individual teacher plan shall not exceed $2,500 per fiscal year. A region shall be allocated an amount from the fund that is proportional to the number of teachers [at-middle-school] in the region. If all funds are not expected to be used by teachers in the region based on the proposed plans submitted by March 30, the funds shall be made available to teachers statewide based on need as demonstrated by student performance. If the requests exceed the funds available, the plans shall be approved based on the date and time of application.

(7) [Travel costs shall be reimbursed pursuant to 200 KAR 2:006. A request may include a reasonable stipend per day based on a six (6) hour day. Reimbursements and stipends shall be paid as soon as possible upon receipt by KDE of a final report from the teacher.

Section 5. Reimbursement Process. (1) The final report for fall and spring activities shall be submitted no later than May 31. The final report for summer activities shall be submitted to KDE no later than thirty (30) days after the completion of the activity.
(2) The report shall include the following:

(a) Evidence of accomplishment by the teacher providing:

1. Documentation of successful completion of the course or program certified by the approved provider; or

2. Evidence that a full or partial portfolio has been submitted for scoring to the EPSB if the teacher is a candidate for the continuing education option for rank change;

(b) An evaluation of the course or program; and

(c) Documentation of expenditures by completing a miscellaneous expense voucher provided by the Kentucky Department of Education.

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 156.670(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 13, 2006 at 10 a.m.
PUBLIC HEARING DATE: May 31, 2006
PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 30, at 2 p.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 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 until 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 May 31. Send written notification of intent to hear the public hearing or written comments on the proposed administrative regulation to:

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) 564-6321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and approval process for use of funds through the Teachers' Professional Growth Fund and requirements and process for distribution of funds.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.553.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the application and approval process for teacher receipt of funds, the requirements and process for distribution of funds, and the number and kinds of approved courses for which applicants may receive funds, as required to be included in regulation by KRS 156.553. It also provides the specifics for the funding priorities and processes for 2006-2007 relative to coaching and mentoring for reading and mathematics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the application and approval process for receipt of funds, the requirements and process for distribution of funds, and the number and kinds of approved courses for which applicants may receive funds. It also provides similar specifics relative to coaching and mentoring for reading and mathematics for 2006-2010.

(2) If 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 addresses the new focus of the funds for coaching and mentoring for reading and mathematics for 2006-2010.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to facilitate the change in focus of the funds for coaching and mentoring for reading and mathematics.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides professional development opportunities for teachers as required under KRS 156.553.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the Kentucky Department of Education with guidance relative to the new coaching and mentoring program for reading and mathematics.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 districts will be eligible to apply to attend the coaching and mentoring institutes.

(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: Coaches and mentors will receive the training and on-going support they need to work effectively with other teachers to increase reading and mathematics achievement.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. Funds are allotted in the budget to support the coaching and mentoring program.

(b) On a continuing basis: Increased use of secretarial and consultant time to administer the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Teachers' Professional Growth Fund and agency general funds.

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Financial Institutions

808 KAR 1:050. Retention of records.

RELATES TO: KRS 287.375
STATUTORY AUTHORITY: KRS 287.375, 287.375 [287.04](1)
NECESSITY, FUNCTION, AND CONFORMITY: To prescribe those records which banks must retain and to prescribe the period of time for which such records must be retained.

Section 1. Definitions. (1) "Record" means any books of account and other books of every kind, journals, ledgers, statements, instruments, documents, files, massage, writing of every kind, and other internal or other data and other information of every description, made or received by a financial institution in the regular course of its business or otherwise, regardless of the mode in which it is recorded. [For purposes of this administrative regulation; record shall be construed to mean any paper, book, photograph, film, reproduction, sound recording, tabulating card, data processing tape or disc, map, drawing or other document that has been prepared or received in the transaction of business.]
VOLUME 32, NUMBER 11 – MAY 1, 2006

Section 2. Record Retention. (1) Records shall be retained by banks in accordance with the Record Retention Schedule, dated July 1, 2005.

(2) Records required to be retained may be maintained in a retrievable electronic format.

(3) All records shall be retained for a period of time that is consistent with the reasonable business practices for a financial institution.

(4) All records shall be retained for a period of time that is consistent with state and federal laws or administrative regulations.

Section 3. Examination. All records required to be maintained under this administrative regulation or applicable state or federal law must be readily available within a reasonable time period upon request by the executive director for examination, investigation, or other authorized purposes.

Section 4. Incorporation by Reference. (1) "The Record Retention Schedule", dated July 1, 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [August 4, 1990, which is hereby incorporated by reference. A copy of the Record Retention Schedule may be obtained by writing to the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. The Record Retention Schedule can be inspected and copied at the Office of the Department of Financial Institutions, 477 Versailles Road during regular office hours, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN W. CLAY, Deputy Secretary
For LAUJANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
CLODILL G. LAWRENCE, Executive Director
APPROVED BY AGENCY: June 12, 2006
FILED WITH LRC: April 12, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 10 a.m. at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Any person interested in being heard at this hearing shall notify this agency in writing by Monday, May 15, 2006, 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, then the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not plan to be a presenter at the public hearing, then you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Wednesday, May 31, 2006. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Greg A. Jennings, General Counsel, Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone number (502) 573-3390, fax number (502) 573-8767.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Greg A. Jennings, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: It updates the retention schedule that all state-chartered banks are required to follow in the maintenance of records.
(b) The necessity of this administrative regulation: The previous schedule is outdated and does not reflect the realities of banking and examination of the banks in today's business environment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 287.375 requires the retention of records and authorizes the executive director to provide such a schedule.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment provides realistic clarity to this agency's regulatory jurisdiction in regards to the examination of banks and provides the banks an updated schedule.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the retention of records schedule which was last modified in 1990, redefines the word "record", provides that banks are required to follow related corporate and tax law, and finally provides that records may be kept in electronic, retrievable format.
(b) The necessity of the amendment to this administrative regulation: The previous schedule was last modified in 1990 and does not reflect the realities of banking and examination of the banks in today's business environment.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 287.375 requires the retention of records and KRS 287.020 authorizes the executive director to promulgate administrative regulations.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides realistic clarity to this agency's regulatory jurisdiction in regards to the examination of banks.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state-chartered banks will be required to follow this new retention schedule.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, new, or by the change if it is an amendment: This regulation merely provides an updated schedule for the retention of records for banks. Banks are already required to follow the 1990 retention schedule that was previously adopted. There should not be any negative impact on the banks due to the amendments made to the retention schedule.
(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: The existing budget already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or assessments will be necessary to implement this administrative regulation.
(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this administrative regulation.
(9) TIERING: Is tiering applied? The regulatory requirements are applicable to all state-chartered banks and, accordingly, tiering does not apply.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(AMENDMENT)

902 KAR 20:091. Facilities specifications, operation and services; community mental health [mental retardation] center.

STATUTORY AUTHORITY: KRS 210.450(1), 216B.010,
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 210.450(1) requires the secretary to promulgate administrative regulations prescribing standards for qualification of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health [mental-retardation] center.

Section 1. Definitions. (1) "Center" means a community mental health [mental-retardation] center.
(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.055(2), (4), or 319.064(4).
(3) "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services to no more than twelve (12) clients who require overnight stays.
(4) "Designated regional service area" means the geographical area to be served by the community mental health [mental-retardation] center.
(5) "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(2).
(6) "Licensed professional clinical counselor" means and individual licensed in accordance with KRS 335.500(3).
(7) (6) "Licensee" means the governing body legally responsible for the community mental health [mental-retardation] center.
(8) (6) "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.
(9) (7) "Psychiatric nurse" means a registered nurse who:
(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing;
(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;
(c) Is a graduate of a three (3) year educational program with two (2) years of experience in a mental health setting; or
(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.
(10) (6) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.
(11) (6) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his behavior.

Section 2. Scope of Operation and Services. A community mental health [mental-retardation] center shall provide a comprehensive range of accessible and coordinated mental health and mental retardation services, including direct or indirect mental health or mental retardation services, to the population of a designated service area, as required by KRS 210.370 to 210.480.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for:
1. The center;
2. The establishment of administrative policy; and
3. Compliance with federal, state, and local law pertaining to the operation of the center.
(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.
(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:
(a) The total program of the center and its affiliates in accordance with the center's written policies; and
(b) Evaluation of the program as it relates to the client's needs.
(3) Policies. The licensees shall establish written policies for the administration and operation of the center which shall be available to staff and which shall include:
(a) A description of the organizational structure specifying the responsibility, function and interrelations of each organizational unit, and the lines of administrative and clinical authority;
(b) The appropriate method and procedure for storage, dispensing and administering of a drug or biological agent;
(c) Client grievance procedure;
(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations; and
(e) Personnel policy, including:
1. A job description and qualifications for each personnel category;
2. Wage scale, hours of work, vacation and sick leave;
3. A plan for orientation of personnel to the policies and objectives of the center and for on-the-job training, if necessary; and
(4) Client records. A client record shall be maintained for each individual receiving services.
(a) Each entry shall be current, dated, signed, and indexed according to the service rendered;
(b) A client record shall be retained for at least five (5) years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer;
(c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:
1. Be disclosed to an authorized person; and
2. Not be disclosed to an unauthorized person;
(d) Each client record shall contain:
1. An identification sheet;
2. Information on the purpose for seeking a service;
3. A history of findings and treatments rendered;
4. Screening information pertaining to the problem;
5. Staff notes on services provided;
6. Pertinent medical, psychiatric and social information;
7. Disposition;
8. Assigned status;
9. Assigned therapists; and
10. A termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.
(5) Personnel. A community mental health center shall employ the following full-time personnel:
(a) A program director who shall be a:
   a. Psychiatrist;
   b. Certified or licensed psychologist;
   c. Psychiatric nurse; or
   d. Licensed professional clinical counselor;
   e. Licensed marriage and family therapist; or
   f. (a) Qualified social worker.
2. The program director may be the executive director.
(b) A board-certified or board-eligible psychiatrist who shall:
   a. Be responsible for treatment planning;
   b. Provide psychiatric service as indicated by client needs; and
   c. Supervise and coordinate the provision of psychiatric services by the center.
3. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position.
(c) A clinical psychologist who shall provide evaluation and screening services for the client as well as individual or group therapy.
(d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client as well as individual or group therapy.
(e) (a) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care.
   (g) (a) A qualified social worker who shall provide social services as required; and
   (h) (a) A person who shall assure that client records are main-
tained and that information is immediately retrievable.

Section 4. Services. (1) The center shall provide services in the designated regional service area directly or through contract
(2) Direct services. The center shall provide a sufficiently wide range of treatment to meet client needs, including:
(a) Individual therapy;
(b) Family therapy;
(c) Group therapy;
(d) Play therapy;
(e) Behavior modification; and
(f) Chemotherapy.
(3) Plan of care
(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by a clinically licensed or certified professional provider of the treatment.
(b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his statutory scope of practice.
(4) The center shall provide:
(a) A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care). A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff;
(b) Inpatient services through affiliation with a licensed community hospital for a person requiring full-time inpatient care. A center that does not have an affiliation contract in effect shall be considered to be in compliance with this requirement if the center documents a good faith effort to enter into an affiliation contract;
(c) Outpatient service on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis. The outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client’s needs;
(d) Emergency service for the immediate evaluation and care of a person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and
(e) Consultative and education services for an individual and various community agencies and groups to increase the visibility, identifiability, and accessibility of the center and to promote mental health through the distribution of relevant mental health knowledge.
(5) The center shall have a utilization and review plan for the evaluation of the service needs of each client. The need for continuing a service element of each client shall be evaluated with sufficient frequency to ensure that proper arrangements have been made for discharge, for transfer to other elements of service, or referral to another service provider if appropriate.
6 Medications. A treatment involving medication or chemotherapy shall be administered under the direction of a licensed physician or other qualified practitioner, acting within the scope of his practice, and:
(a) Medication or chemotherapy used in treatment shall be recorded in the staff notes on a special medications chart in the client record;
(b) A copy of the prescription shall be kept in the client record;
(c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice on each individual receiving medication prescribed or administered by the center;
(d) Drug supplies shall be stored under proper sanitary, temperature, light and moisture conditions;
(e) Medication kept by the center shall be properly labeled;
(f) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication; and
(g) Medication kept in the center shall be kept in a locked cabinet.

1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).
2. There shall be a controlled substances record, in which is recorded:
   a. The name of the patient;
   b. The date, time, dosage, balance remaining and method of administration of each controlled substance;
   c. The name of the prescribing physician or other ordering practitioner acting within the limits of his statutory scope of practice;
   and
   d. The name of the nurse who administered it, or staff who supervised the self-administration.
3. Except for medication to be self-administered in a crisis stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 5. Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:
(a) A mental status evaluation and physical health questionnaire of the client upon admission;
(b) A treatment planning process;
(c) Procedure for crisis intervention; and
(d) Discharge and aftercare planning processes.
(2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:
(a) Staffing:
   1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:
      a. Every four (4) clients during normal waking hours;
      b. Every six (6) clients during normal sleeping hours;
   2. Administrative oversight of the program shall be provided by a staff member who shall be:
      a. A person licensed or certified to provide mental health services independent of clinical supervision;
      b. A qualified mental health professional as defined in KRS 202A.011(12); or
   c. A person qualified to be program director under Section 3(5)(a) of this administrative regulation.
(3) The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.
(b) Criteria to assure that each client in a crisis stabilization program shall be:
   1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children’s program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for that resident;
   2. In need of short-term behavior management and at risk of placement in a higher level of care;
   3. Able to take care of his own personal needs, if an adult;
   4. Medically able to participate in services; and
   5. Served in the least restrictive environment available in the community.
(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client’s stay in the crisis stabilization unit or for problems identified during the admission assessment.
(d) Rights of a crisis stabilization client, to include:
   1. A description of the client’s rights and the means by which these rights are protected and exercised.
   2. At the point of admission, the program shall provide the client and his parents, if he is a child, his guardian, or other legal representative with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the client and his parents, if he is a child, his guardian, or other legal representative if either cannot read and shall cover:
      a. The right to treatment, regardless of race, religion, or ethnicity;
      b. The right to recognition and respect of personal dignity in the provision of all treatment and care;
      c. The right to be provided treatment and care in the least restrictive environment possible;
d. The right to an individualized plan of care;
e. The right of the client and his parents, if he is a child, or his legal representative, to participate in treatment planning;
f. The nature of care, procedures, and treatment that he shall receive;
g. The risks, side effects, and benefits of all medications and treatment procedures used; and
h. The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

3. The rights of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and shall be posted in appropriate areas of the facility.

4. The policy and procedure concerning the clients' rights shall assure and protect client personal privacy, within the constraints of his plan of care. These rights to privacy shall include:
   a. Visitations by family or significant others outside the area of the facility, and
   b. Telephone communications with family or significant others at a reasonable frequency.

5. If a privacy right is limited, the client and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation. A limitation to a privacy right shall be documented in the client's record.

6. The client and his parents, if he is a child, his guardian, or other legal representative, shall be informed of the use and disposition of a product of special observation and audio visual techniques such as:
   a. One (1) way vision mirror;
   b. Audio recording;
   c. Video tape recording;
   d. Television;
   e. Movie; and
   f. Photograph.

7. Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a child client, including the use of a time-out room. The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation. Behavior management techniques shall be explained fully to each client and his parents, or his guardian or other legal representative.

8. The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint as defined in 905 KAR 1:300.

9. Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.

(e) The use of therapeutic holds as a safe behavioral management technique. The policy shall describe:
   1. Criteria for appropriate use of therapeutic holds;
   2. Documentation requirements; and
   3. The requirement for completion of a training course approved by the Department of Mental Health and Mental Retardation, prior to using therapeutic holds.

(f) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.

(g) The policy for proper management of pharmaceuticals, consistent with the requirements of Section 4(6) of this administrative regulation.

(h) Except for a program accredited by the Joint Commission for Accreditation of Health Organizations or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:
   1. Procedures to be followed by staff in the event of a medical emergency of a client;
   2. Proper nutrition;
   3. Emergency preparedness;
   4. Security; and
   5. School attendance for children.

(3) Facility requirements for a crisis stabilization unit.

(a) A living unit shall be located within a single building and shall include:
   1. Bedrooms.
      a. No more than four (4) clients shall sleep in a bedroom.
      b. A bedroom shall be equipped with a bed for each client.
      c. A bed shall be at least thirty-six (36) inches wide and at least five (5) feet in length and shall be long and wide enough to accommodate the client's size.
      d. A bed shall have a mattress cover, two (2) sheets, a pillow, and such bed covering as is required to keep the clientele comfortable.
      e. A bed shall be equipped with a support mechanism and a clean mattress.
      f. A bed shall be placed so that no client may experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.
      g. There shall be separate sleeping quarters for males and females.
      h. A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the licensure agency and the Department of Housing, Buildings and Construction.
   2. Bathrooms. Each living unit shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every eight (8) resident clients. If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use these facilities at the same time.

3. Living area.
   a. The living area shall provide comfortable seating for all clients housed within the living unit.
   b. Each living unit shall be equipped with a working sink, stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

   c. A living unit shall house a maximum of twelve (12) clients.

Section 6. Facility Specifications. (1) A facility housing a community mental health [mental retardation] center or a crisis stabilization unit shall be a general purpose building [buildings] of safe and durable construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

   (a) Requirements for fire safety pursuant to 815 KAR 10:050; and

   (b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198.263 and administrative regulations promulgated thereunder.

   (2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

   (3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR 10:050, before re licensure is granted by the licensure agency.

ROBERT BENVENUTI, Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: March 29, 2006
FILED WITH LRC: March 29, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006, 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do
not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business May 31, 2006. Please 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: Steve Davis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health center.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation and services, and facility specifications of a community mental health center.
(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 licensure requirements for the operation and services, and facility specifications of a community mental health center.
(d) How this administrative regulation currently assists or will assist in the effective administration of the authorizing statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the licensure requirements for the operation and services, and facility specifications of a community mental health center.
(2) If 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 expands the field of provider types authorized to provide services in community mental health centers.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enhance member and CMHC access to a broader range of qualified mental health providers.
(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 expanding the field of provider types authorized to provide services in community mental health centers.
(d) How the amendment will assist in the effective administration of the authorizing statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by expanding the field of provider types authorized to provide community mental health center services.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The affected entities include the 14 community mental health centers as well as the population they serve.
(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. Community mental health centers and the population they serve will experience access to a broader range of mental health professionals.
(5) Provide an estimate of how much it will cost to implement this administrative regulation.
(a) Initially: The Office of Inspector General anticipates no fiscal impact as a result of this amendment.
(b) On a continuing basis: The Office of Inspector General anticipates no fiscal impact as a result of this amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or increase any fees.
(9) Tieng: Is tiering applied? Tieng was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General

Amendment

906 KAR 1:110. Critical access hospital services.


STATUTORY AUTHORITY: KRS 216.380(4)(4), 216.010(4)(4), 216.015(6), 216.042(1)(a), (c), (d), (e), 42 U.S.C. 1985-4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.380(4)(4) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement a program for licensure of critical access hospitals. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.
(2) "Licensure" means the entity that has been issued and holds a valid critical access hospital license from the Cabinet for Health and Family Services; a general acute-care hospital licensed as a critical access hospital.

Section 2. Requirements for Critical Access Status. (1) An applicant for initial licensure of a critical access hospital shall provide documentation to the cabinet verifying that:
(a) The requirements of KRS 216.380(3)(a) or (4) have been met;
(b) The hospital qualifies for state designation under 42 U.S.C. Section 1985-4(c)(2); and
(c) The requirements of this administrative regulation have been met.
(2) A critical access hospital that was certified by the secretary of the cabinet as a necessary provider of services prior to January 1, 2006 may be relicensed as a critical access hospital, provided the requirements of this administrative regulation are met. In order to be relicensed as a critical access hospital, a general acute-care hospital shall meet the requirements established in KRS 216.380(3)(a).
(3) If an application for initial licensure of a critical access hospital is denied by the cabinet, the applicant shall be entitled to an administrative hearing pursuant to KRS Chapter 13B. Licensure hearings shall follow the procedures in 900 KAR 6:040. (5) Before the cabinet certifies a hospital as a necessary provider pursuant to KRS 216.380(3)(a)(3), the hospital shall meet one of the following criteria:
(a) Be located in a county where the percentage of the population with income less than 200 percent of poverty is greater than the state average, based on data published by the U.S. Census Bureau; or
(b) Be located in a county that has an unemployment rate higher than the state average, based on data published by the Cabinet for Health Services, Department of Pub-
Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the critical access hospital and for compliance with federal, state, and local law pertaining to the operation of the critical access hospital.

(2) A critical access hospital shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall:
   (a) Establish written policies and lines of authority; and
   (b) Designate the person principally responsible for the daily operation of the critical access hospital.

(4) The licensee shall develop a patient care policies with the advice of a group of professional persons, as identified by the licensee.

(a) The group of professional persons shall include:
   1. One (1) or more physicians licensed in the Commonwealth of Kentucky; and
   2. One (1) or more persons who are not members of the staff.

   (b) The patient care policy shall include:
   1. A description of services that the critical access hospital shall provide directly or through contractual agreements;
   2. A written program narrative describing in detail the:
      a. Services to be offered;
      b. Methods and protocols for service delivery;
      c. Qualifications of personnel to be involved in the delivery of services;
      d. Outcomes expected to be attained through the delivery of specified services.

   3. Guidelines for medical case management of health problems which include:
      a. Criteria for determining if a case requires medical consultation;
      b. Patient referral procedures; and
      c. Maintenance of health records.

   4. Procedures for the proper storage, handling and administration of drugs and biologics; and
   5. Procedures establishing the annual review and evaluation of services provided.

(5) A critical access hospital shall establish written policies regarding patient rights and responsibilities. The policies shall assure that each patient is:
   1. Informed of:
      a. Patient rights;
      2. Rules and regulations governing patient conduct and responsibilities; and
      3. The procedure for handling a patient grievance;
      b. Informed of services available and related charges, including charges not covered by Medicare, Medicaid, or other third-party payor;
      c. Informed of the:
         i. Medical condition, unless medically contraindicated as documented in his medical record;
         ii. Right to participate in planning his medical treatment; and
         iii. Right to refuse to participate in experimental research;
         iv. Assisted in understanding his patient rights;
         v. Provided confidential treatment of his records and given the opportunity to approve or refuse their release to an individual not involved in his care, except as required by Kentucky law or third-party payment contract;
         vi. Treated with consideration, respect, and recognition of his dignity and individuality, including privacy in treatment and care of personal health needs; and
         vii. Informed of the procedure for filing a grievance or a recommendation to change a policy or service. The policy shall establish a time frame within which critical access hospital personnel shall determine what corrective action to take.

(6) Personnel.

(a) Staffing shall be in accordance with KRS 216.380(3)(e).

(b) A physician shall.
   1. Be responsible for all medical aspects of the critical access hospital;
   2. Provide direct medical services in accordance with KRS Chapter 311.
   3. Be present to provide medical direction, supervision, and consultation to the staff at least once in every two (2) week period, unless no patient has been treated since the last visit;
   4. Participate with other medical personnel in developing, executing, and periodically reviewing written policies and services;
   5. Review and sign patient records during the site visit; and
   6. Provide medical orders and medical care services to patients in accordance with the critical access hospital protocols.

(c) A registered nurse or licensed practical nurse shall be on duty if a patient has been admitted for overnight stay (an in-patient is present).

(7) The critical access hospital shall have transfer and linkage contracts that meet the requirements of KRS 218.380(11) and (12)(e) and (9)(e).

(8) Medical records.

(a) A critical access hospital shall maintain medical records. A medical record shall contain at least the following:
   1. The names of the patient's immediate family members;
   2. Medical and social history, including data obtainable from other providers;
   3. Description of each medical visit or contact, including:
      a. Condition or reason necessitating visit or contact;
      b. Assessment;
      c. Diagnosis;
      d. Services provided;
      e. Medications and treatments prescribed; and
      f. Disposition made;
   4. Reports of laboratory, x-ray, and other test findings; and
   5. Documentation of referrals made, including:
      a. Reason for referral;
      b. To whom patient was referred; and
      c. Information obtained from referral source.

(b) Confidentiality of individual patient records shall be maintained at all times.

(c) Transfer of records. The critical access hospital shall establish systematic procedures to assist in continuity of care if the patient moves to another source of care, and shall, upon proper release, transfer medical records or an abstract upon request.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or, if the patient is an in-patient of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(8) Utilization review and medical audit. In order to determine the appropriateness of services delivered, there shall be a written plan for utilization review which specifies the frequency of reviews.
and composition of the body conducting the review.

(10) Quality assessment and performance improvement program.

(a) A critical access hospital shall have a program, in accordance with KRS 216.380(10)(k)(7), to ensure continuous and effective mechanisms for:
   1. Review and evaluation of patient care; and
   2. Corrective action.
(b) The program shall be approved by the licensee.
(c) The program shall:
   1. Establish responsibility for monitoring and evaluation of services;
   2. Delineate the scope of care;
   3. Identify specific aspects of care to be provided;
   4. Establish and document clinical criteria used to monitor care and services;
   5. Systematically evaluate the standard of care to identify problems and recommend corrective action or alternatives to improve the standard of care;
   6. Establish criteria to assess the effectiveness of corrective action taken to improve care; and
   7. Require documentation of improvements in the standard of care, subsequent to corrective action taken.

(11) Contracted services. The critical access hospital shall assure that a service provided under contract is properly licensed or certified in accordance with applicable local, state, and federal regulations and statutes.

Section 4. Provision of Services. (1) A critical access hospital shall provide the services [established in accordance with KRS 216.380(5)(4)].

(2)(a) A critical access hospital shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient on a twenty-four (24) hour basis.
(b) If the critical access hospital provides laboratory services directly, the service shall be in compliance with 902 KAR 20.016, Section 4(4).
(c) If the critical access hospital contracts for laboratory services, the laboratory if contracts with shall be in compliance with KRS Chapter 333.
(d) The following services shall be provided:
   1. Chemical examination of urine, including ketone measurement, by stick or tablet method, or both;
   2. Microscopic examination of urine sediment;
   3. Hemoglobin or hematocrit;
   4. Blood sugar;
   5. [Gram-stain;]
   6. Examination of stool specimens for occult blood;
   7. [Family] Pregnancy tests; and
   8. [Primary] Culturing for transmittal to a hospital laboratory or licensed laboratory; and
   9. [Toxin for pinworms].

(3) A critical access hospital shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and shall have available the drugs and biologics commonly used in life-saving procedures, such as anesthetics, antibiotics, anti-convulsants, anticoagulants and emetics, serums and toxoids.

(a) Examination services shall be provided by the critical access hospital in accordance with 902 KAR 20:012.
(b) There shall be a physician, nurse practitioner, or physician assistant with training or experience in emergency care on-call and immediately available by telephone or radio contact, and available on site within thirty (30) minutes on a twenty-four (24) hour per-day basis.
(c) A registered nurse shall be on duty at the hospital to provide immediate emergency care on a twenty-four (24) hour per day basis.

(4) Emergency services shall be provided in accordance with KRS 216.380(5)(4)(g).

(4) In accordance with KRS 216.380(5)(4)(j), a critical access hospital shall provide, either directly or through contract, basic pharmacy services essential to the treatment of the patient, on a twenty-four (24) hour basis.

(a) If the critical access hospital provides pharmacy services directly, it shall be in compliance with 902 KAR 20:016, Section 4(5).
(b) If the critical access hospital contracts for pharmacy services, the pharmacy it contracts with shall be in compliance with KRS Chapter 315.

(5) In accordance with KRS 216.380(5)(4)(b), a critical access hospital shall provide, either directly or through contract, basic radiology services essential to the immediate diagnosis and treatment of the patient, on a twenty-four (24) hour basis.

(a) If the critical access hospital provides radiology services directly, it shall be in compliance with 902 KAR 20:016, Section 4(6).
(b) If the critical access hospital contracts for radiology services, the radiology service it contracts with shall have a current license or registration pursuant to KRS 211.842 to 211.852 and applicable administrative regulations.

(6) Pursuant to KRS 216.380(5)(4)(b), dietary services shall be provided either directly or by contract, in accordance with 902 KAR 20:016, Section 4(9), if a patient is admitted to the critical access hospital and remains an in-patient for twenty-four (24) hours.

(7) A critical access hospital that has established a psychiatric unit in accordance with KRS 216.380(7)(a), shall be in compliance with 902 KAR 20:180.

(8) A critical access hospital that has established a rehabilitation unit in accordance with KRS 216.380(7)(b), shall be in compliance with 902 KAR 20:240.

Section 5. Physical and Sanitary Environment. A critical access hospital shall comply with the provisions of 902 KAR 20:016, Section 3(10).

Section 6. Facility Requirements. A critical access hospital shall comply with the requirements of 902 KAR 20:009 related to the services offered.

[Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) Form LCR-242, Application for Initial License to Operate a Critical Access Hospital (CAH), June 2000 edition; and
   (b) Form LCR-242A, Application for Relesenue to Operate a Critical Access Hospital (CAH), June 2000 edition.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Fourth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.”

ROBERT J. BENVENUTI, III, Esq., Inspector General
MARK D. BIRDWHISTEL, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 14, 2006 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steven D. Davis, Esq.
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for conversion of an acute care hospital to a critical access hospital and establishes standards for operation and licensure of the facility.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure the orderly and effective process for conversion of an acute care hospital to a critical access hospital and establishes minimum health and safety standards that must be met to receive a license and to remain in good standing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042(1)(c) requires the Cabinet to establish license standards and procedures to ensure safe, adequate, and efficient health care facilities and KRS 216B.105(1) requires an individual to obtain a health care facility license prior to operating a health care facility. These administrative regulations establish the necessary standards and enable licensure of critical access hospitals.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to implement the license standards that are required by KRS 216B.042.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation removes standards for converting an acute care hospital as a "necessary provider" as the window for the conversion ended on January 1, 2006 pursuant to 42 U.S.C. The administrative regulation makes technical corrections to language and statutory citations that have changed since the adoption of the original regulation.
(b) How the amendment of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to eliminate references to criteria for conversion to a critical access hospital under the "necessary provider" protocol and to correct other technical matters.
(c) How the amendment conforms to the content of the authorizing statutes: It is unlawful to operate or maintain a critical access hospital without obtaining a license from the cabinet in accordance with KRS 216B.105 and 216B.380. KRS 216B.380 establishes the standards for conversion of an acute care hospital and KRS 216B.042(1)(c) requires the cabinet to develop license standards.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will promote consistency between the federal and state law and provide clarity as to the standard for conversion of an acute care hospital to a critical access hospital.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts 31 licensed critical access hospitals in Kentucky, although none of the existing critical access hospitals should be affected by the amendment filed with this regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation or the administrative regulation, if new, or by the change if it is an amendment: The amendment does not impact any of the critical access hospitals as it merely amends the conditions and window for converting under the "necessary provider" designation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost to implement this regulation.
(b) On a continuing basis: There will be no additional continuing cost to enforce the regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amended regulation will not increase any fees or require any additional funding to implement.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation will not create or increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all individuals and entities regulated by it.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
Division of Long-Term Care and Community Alternatives
(Amendment)

907 KAR 1:022. Nursing facility services and Intermediate care facility for individuals with mental retardation or a developmental disability services.

RELATES TO: 42 C.F.R. 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, l, n, o, p, r, s-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the regulations relating to nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.
(2) "High-intensity nursing care services" means care provided:
(a) To a Medicaid-eligible individual who meets high-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and
(b) By a nursing facility or a nursing facility with waiver participating in the Medicaid Program with care provided in beds also participating in the Medicare Program.
(3) "High-intensity rehabilitative services" means therapy services which:
(a) Are expected to improve an individual's condition while the individual possesses reasonable potential for improvement in functional capability; and
(b) Do not include restorative and maintenance nursing procedures, including routine range of motion exercises and application of splints or braces or by orders and staff.
(4) "Intermediate care facility for individuals with mental retardation or a developmental disability" or "ICF-MR-DD" means a licensed intermediate care facility for individuals with mental retardation or a developmental disability certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for individuals with mental retardation or a developmental disability.
(5) "Intermediate care facility for individuals with mental retardation or a developmental disability services" means care provided:
(a) To a Medicaid-eligible individual who meets ICF-MR-DD patient status criteria in accordance with Section 4 of this administrative regulation; and
(b) By an ICF-MR-DD participating in the Medicaid Program.
(5) "Intermittent high-intensity nursing care services" means services for an individual who requires high-intensity nursing care
services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis and not less than three (3) days per week.

(7) "Low-intensity nursing care services" means care provided:
   (a) To a Medicaid-eligible individual who meets low-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and
   (b) By a nursing facility or a nursing facility with waiver participating in the Medicaid program.

(8) "Medical condition" means a usually-defective state of health relative to a clinical diagnosis made by a licensed physician, physician assistant, or advanced registered nurse practitioner.

(9) "Nursing facility" or "NF" means:
   (a) A facility;
   (1) To which the state survey agency has granted an NF license; and
   (2) For which the state survey agency has recommended to the department certification as a Medicaid provider; and
   (3) To which the department has granted certification for Medicaid participation; or
   (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1396t and 1396i, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

(10) "Nursing facility with Medicaid waiver" or "NF-W" means a facility:
   (a) To which the state survey agency has granted an NF license;
   (b) For which the state survey agency recommends to the department certification as a Medicaid provider;
   (c) To which the department has granted a waiver of the nursing staff requirement; and
   (d) To which the department has granted certification for Medicaid participation.

(11) "Patient status" means that an individual possesses care needs in accordance with Section 4 of this administrative regulation for treatment in an institutional setting.

(12) "Personal care" means services to help an individual achieve and maintain good personal hygiene which may include assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth and washing, and grooming and cutting of hair.

(13) "Stable medical condition" means a medical condition which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in a patient's condition or treatment regimen.

Section 2. Participation Requirements. A facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR-DD shall meet the requirements established in this section.

(1) An application for participation shall be made in accordance with 907 KAR 1:671 and 907 KAR 1 672.

(2) A nursing facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare unless the facility has obtained a Medicaid waiver of the nurse staffing requirement. If a nursing facility has less than ten (10) beds certified for Medicaid, all Medicaid certified beds shall also be certified to participate in Medicare.

(3) If a nursing facility which has obtained a Medicaid waiver of the nurse staffing requirements chooses to participate in Medicare, the facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare. If less than ten (10) beds are certified for Medicaid, all Medicaid beds shall also be certified to participate in Medicare.

(4) A nursing facility or a nursing facility with waiver shall be required to comply with the preadmission screening and resident review requirements specified in 42 U.S.C. 1396r and 907 KAR 1:789. A facility failing to comply with these requirements shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, 42 C.F.R. 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR-DD status.

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 6 of this administrative regulation, a facility shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(7) A participating nursing facility shall be certified in accordance with standards and conditions specified in the Medicaid Nursing Facility Services Manual before the facility may operate a unit that provides:
   (a) Preadmission specialized rehabilitation services for a person with a brain injury; or
   (b) Care for a person who is ventilator dependent.

Section 3. Payment Provisions. (1) Payment for high-intensity nursing care, low-intensity nursing care, or ICF-MR-DD services shall be limited to those services meeting the care definitions established in Section 1 of this administrative regulation.

(2) An NF or NF-W shall receive payment for high-intensity nursing care services provided to a Medicaid-eligible individual meeting high-intensity nursing care patient status criteria if the services are provided in a Medicaid participating bed that is also participating in the Medicare Program.

(3) As NF or NF-W shall receive payment for low-intensity nursing care services provided to a Medicaid-eligible individual meeting low-intensity nursing care patient status criteria if the services are provided in a Medicaid participating bed.

(4) An ICF-MR-DD shall receive payments for ICF-MR-DD services only.

Section 4. Determining Patient Status. A patient status decision shall be based on medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) For an admission and continued stay, an individual shall qualify under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755.

(2) An individual shall qualify for high-intensity nursing care if:
   (a) On a daily basis:
      1. The individual's needs mandate;
      a. High-intensity nursing care services; or
      b. High-intensity rehabilitation services; and
      2. The care can only be provided on an inpatient basis;
   (b) The inherent complexity of a service prescribed for an individual exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or
   (c) The individual has an unstable medical condition manifesting a combination of at least two (2) or more care needs in the following areas:
      1. Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or Intravenous feeding;
      2. Nasogastro or gastrostomy tube feedings;
      3. Nasopharyngeal or tracheotomy aspiration;
      4. Recent or complicated ostomy requiring extensive care and self-help training;
      5. In-dwelling catheter for therapeutic management of a urinary tract condition;
      6. Bladder irrigations in relation to previously indicated stenosis;
      7. Special vital signs evaluation necessary in the management of related conditions;
      8. Stomie dressings;
      9. Changes in bed position to maintain proper body alignment;
      10. Treatment of extensive decubitus ulcers or other widespread skin disorders;
      11. Receiving medication recently initiated, which requires high-intensity observation to determine desired or adverse effects or frequent adjustment of dosage;
      12. Initial phases of a regimen involving administration of medical gases; or
      13. Receiving services which would qualify as high-intensity rehabilitation services if provided by or under the supervision of a qualified therapist, for example:
a. Ongoing assessment of rehabilitation needs and potential;
b. Therapeutic exercises;
c. Gait evaluation and training performed by or under the supervision of a qualified physical therapist;
d. Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility;
e. Maintenance therapy if the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance;
f. Ultrasound, short wave, and microwave therapy treatments;
g. Hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (if the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified therapist are required); or
h. Services by or under the supervision of a speech pathologist or audiologist if necessary for the restoration of function in speech or hearing.

(5) An individual shall be determined to meet low-intensity nursing status if the individual requires, unrelated to age appropriate dependencies with respect to a minor, intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting. Making the decision as to whether patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high-intensity nursing care services not provided in a personal care home shall be considered to meet patient status;
(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, an ambulatory cardiac patient with hypertension may be reasonably stable on appropriate medication, but have Intellectual deficiencies preventing safe use of self-medication; or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status;
(c) An individual with a stable medical condition manifesting a significant combination of at least two (2) or more of the following care needs shall be determined to meet low-intensity patient status if the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting:
   1. Assistance with wheelchair;
   2. Physical or environmental management for confusion and mild agitation;
   3. Must be fed;
   4. Assistance with going to bathroom or using bedpan for elimination;
   5. Old colostomy care;
   6. Indwelling catheter for dry care,
   7. Changes in bed position;
   8. Administration of sterilized dosages of medication;
   9. Restorative and supportive nursing care to maintain the individual and prevent deterioration of his condition;
   10. Administration of injections during time licensed personnel is available;
   11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or
   12. Routine administration of medical gases after a regimen of therapy has been established.
(d) An individual shall not be considered to meet patient status criteria if care needs are limited to the following:
1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch or cane;
3. A limited diet such as low salt, low residue, reducing or another minor restrictive diet; or
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) An individual with a mental illness or mental retardation or a developmental disability meeting the health status and care needs specified in subsections (2) or (3) of this section shall:
(a) Be considered to meet patient status; and
(b) Be specifically excluded from coverage in the following situations:
1. If the department determines that in the individual case the combination of care needs are beyond the capability of the facility and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual, other patients in the facility, or staff of the facility; or
2. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755 for entering or remaining in a facility.

(5) An individual shall meet ICF-MR-DD patient status if the individual requires physical or environmental management or rehabilitation for moderate to severe retardation and meets the following criteria:
(a) The individual has significant developmental disabilities or significantly subaverage intellectual functioning and requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with support services;
(b) The individual requires a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning while:
   1. Learning fundamental living skills;
   2. Learning to live happily and safely within his own limitations;
   3. Obtaining educational experiences that will be useful in self-supporting activities;
   4. Increasing his awareness of his environment; or
(c) The individual has a psychiatric primary diagnosis or needs:
1. The individual also has care needs as shown in paragraph (a) or (b) of this subsection;
2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for individuals with mental retardation or a developmental disability); and
3. The individual does not require psychiatric inpatient treatment.

(5) An individual who does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not meet ICF-MR-DD patient status.

(7) An individual shall not be denied for ICF-MR-DD services solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for ICF-MR-DD services on the basis of all other factors.

(8) Excluding an individual with mental retardation, for an individual with a developmental disability to qualify for ICF-MR-DD services, the disability shall have manifested itself prior to the individual's 22nd birthday.

(9) Transfer trauma criteria. A Medicaid recipient in an NF who does not meet the low-intensity or high-intensity nursing care patient status criteria established in this section shall not be discharged from an NF if:
(a) The recipient has resided in an NF for at least eighteen (18) consecutive months;
(b) The recipient's attending physician determines that the recipient would suffer transfer trauma in that his or her physical, mental or emotional well being would be compromised by a discharge action as a result of not meeting patient status criteria; and
(c) The department confirms the recipient's attending physician's assessment regarding the trauma caused by possible discharge from the NF.

(10) A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (9) of this section:
(a) Shall remain in an NF and continue to be covered by the department for provider reimbursement at least until his or her subsequent transfer trauma assessment; and
(b) Be reassessed for transfer trauma every six (6) months.

(11) The recipient transfer trauma criteria established in subsection (9) of this section shall not apply to an individual who resides in a facility which experiences closure or a license or certificate revocation.
Section 5. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with waiver, or ICF-MR-DD services shall continue to be provided to an individual if his or her health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. (2) An individual's patient status shall be reevaluated at least once every six (6) months. (3) If a reevaluation of care needs reveals that an individual no longer requires high-intensity nursing care, low-intensity nursing care, or intermediate care for an individual with mental retardation or a developmental disability: (a) Payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care; and (b) Ten (10) days from the date the reevaluation is finalized, payment shall no longer be appropriate in the facility.

Section 6. Requirements, Standards and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury and meets the high-intensity nursing care patient status criteria established in Section 4 of the administrative regulation or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if preadmission to the unit with another third-party coverage, authorization shall be granted prior to exhaustion of those benefits. (1) Injuries within the scope of benefits shall be: (a) Central nervous system injury from physical trauma; (b) Central nervous system damage from anoxia or hypoxic episodias; or (c) Central nervous system damage from an allergic condition, toxic substance or another acute medical or clinical incident. (2) The following items shall be indicators for admission: (a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable; (b) The individual shall not be in a persistent vegetative state; (c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential; (d) The individual requires coma management; or (e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis. (3) The determinations as to whether preauthorization is appropriate shall be made taking into consideration the following: (a) The presenting problem; (b) The goals and expected benefits of the admission; (c) The initial estimated time frames for goal accomplishment; and (d) The services needed. (4) The following list of conditions shall not be considered brain injuries requiring specialized rehabilitation under this section: (a) A stroke treatable in a nursing facility providing routine rehabilitation services; (b) A spinal cord injury in which there is no known or obvious injury to the intercerebral central nervous system; (c) Progressive dementia or other mentally impairing condition; (d) Depression or psychiatric disorders in which there is no known or obvious central nervous system damage; (e) Mental retardation or birth defect related disorder of long standing; or (f) Neurological degenerative, metabolic or other medical condition of a chronic, degenerative nature. (5) An individual may qualify for coverage under the brain injury program: (a) He or she has a stable medical condition with complicating care needs which prevent the individual from caring for him or herself in an ordinary manner outside an institution; (b) The individual has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require specialized rehabilitation services; and (c) The following criteria are met: 1. The individual shall not have previously received specialized rehabilitation services (an individual discharged for the purpose of transfer to another brain injury facility shall not be considered to have "previously received specialized rehabilitation services") as established in this section; 2. The individual shall have the potential for rehabilitation; 3. The care shall be prior authorized on an individual basis by the department; and 4. The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Requirements, Standards and Preauthorization of Certified Distinct-part Nursing Facility Ventilator Services. An individual who is ventilator dependent and meets the high-intensity nursing care patient status criteria established in Section 4(2) of this administrative regulation shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Medicaid Nursing Facility Services Manual. (1) To participate in the Medicaid Program as a distinct-part nursing facility ventilator service provider: (a) A nursing facility shall operate a program of ventilator care within a certified distinct-part nursing facility unit which meets the needs of all ventilator patients admitted to the unit; and (b) A certified distinct-part nursing facility unit shall: 1. Not have less than twenty (20) beds certified for the provision of ventilator care; 2. Be required to have an average patient census of at least fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distinct-part ventilator nursing facility unit; 3. Have a ventilator machine owned by the facility for each certified bed with an additional backup ventilator machine required for every ten (10) beds; and 4. Have an appropriate program for discharge planning and weaning from the ventilator. (2) The following items shall be the patient criteria and treatment characteristics for a distinct-part ventilator nursing facility: (a) An individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual: 1. Requires: a. This mechanical support for twelve (12) or more hours per day; and b. Twenty-four (24) hours per day high-intensity specialty nursing care; or 2. Is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and a. The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is consistent with the maximal function of the individual and ultimately no mechanical respiratory support; b. The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism) as documented by the individual's physician and nursing progress notes; and c. The individual requires twenty-four (24) hours per day high-intensity specialty nursing care. (b) An individual shall not be considered ventilator dependent due to being in an active weaning program if: 1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism); or 2. The individual has been off the ventilator (or respiration stimulating mechanism) for seventy-two (72) consecutive hours. (c) An admission from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer. (d) A physician's order shall specify that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.
(3) A patient status determination shall be made taking into consideration the following factors and those defined in the Medicaid Nursing Facility Services Manual, Section IV-B, C and D:
(a) Alternative care possibilities;
(b) Goals for patient care;
(c) Primary hyperventilation, restrictive lung, ventilatory muscular dysfunction, or obstructive airway disorders needs which may necessitate mechanical ventilator and related care;
(d) Nonhospital management factors and needs;
(e) Patient treatment characteristics;
(f) Home care potential;
(g) Suitability of transfer to the ventilator care unit;
(h) Provision of an appropriate place of care; and
(i) Other facility admission indicators as established in the Medicaid Nursing Facility Services Manual.

Section 8. Denial of Patient Status. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility or ICF-MR-DD, the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 9. Reserved Bed Days. The department shall cover and reimburse for reserved bed days as follows:
(1) In accordance with subsection (3) of this section, reserved bed days, per resident, for an NF or an NF-W shall be:
(a) Covered for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;
(b) Covered for a maximum of ten (10) days per calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;
(c) Reimbursed at seventy-five (75) percent of a facility’s rate if the facility’s occupancy percent is ninety-five (95) percent or greater; and
(d) Reimbursed at fifty (50) percent of a facility’s rate if the facility’s occupancy percent is less than ninety-five (95) percent.
(2) In accordance with subsection (3) of this section, for an ICF-MR-DD:
(a) Reserved bed days, per resident, for an ICF-MR-DD shall:
1. Be covered for a maximum of forty-five (45) days within a calendar quarter; and
2. Not exceed fifteen (15) days per stay due to hospitalization; and
(b) More than thirty (30) consecutive reserved bed days due to hospitalization plus leave of absence or due to leave of absence shall be approved for coverage.
(3) Coverage during an individual’s absence due to hospitalization or due to leave of absence shall be contingent upon the following conditions being met:
(a) The individual shall:
1. Be in Medicaid payment status in the level of care he or she is authorized to receive; and
2. Have been a resident of the facility at least overnight;
(b) An individual for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;
(c) The individual shall be reasonably expected to return to the same level of care;
(d) Due to demand at the facility for beds at that level, there shall be a likelihood that the bed would be occupied by another patient were it not reserved;
(e) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, or another noncovered service;
(f) For a leave of absence other than for hospitalization, the individual’s plan of care shall include a physician’s order providing for leave; and
(g) A leave of absence shall include a visit with a relative or friend, or a leave to participate in a state-approved therapeutic or rehabilitative program.

Section 10. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.
(2) Compliance with 907 KAR 1:755 shall be required in order for an individual to be admitted to an NF.

(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. A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, 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 no later than May 15, 2006, 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 May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

MARK D. BIRDWHISTELL, Secretary
MIKE BURNISIDE, Deputy Secretary
SHANNON TURNER, D.O., Commissioner
APPROVED BY AGENCY: April 5, 2006
FILED WITH LRF: April 6, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006, 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 on the proposed administrative regulation until close of business May 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to nursing facility (NF) and intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD) services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the provisions relating to NF and ICF-MR-DD services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.
(c) How this administrative regulation conforms to the content
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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 updates material incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation updates material incorporated by reference.

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 Medicaid Services

Division of Long Term Care and Community Alternatives

(Amendment)

907 KAR 1:145. Supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 205.5806, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, e, f, h.

STATUTORY AUTHORITY: KRS 1944.030(494.030(2), 1944.050(1), 205.520(2), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: [60-2004-726, effective July 8, 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 [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-315B;
(b) Submitted to the department for a level of care determination; and
(c) Conducted prior to an individual's initial admission to the waiver and at least annually thereafter.

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

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

(4) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KHS 319.000 through 319.959.

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

(6) "Department" means the Department for Medicaid Services or its designee.
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(7) "Developmental disability" means a disability that manifested prior to the age of twenty-two (22), which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions that result in impairment of general intellectual functioning and adaptive behavior similar to that of a person with mental retardation and are a direct result of, or are influenced by, the person's substantial cognitive defects.

(8) "DMR" means the Division for Mental Health and Mental Retardation Services.

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

(10) "Electronic signature" is defined in KRS 369.102.

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

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

(b) Death or incapacitation of the primary caregiver;

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

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

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

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

(13) "ICF-MR-DD" means an Intermediate care facility for an individual with mental retardation or a developmental disability.

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

(15) "Level of care determination" means a determination by the department that an individual meets low intensity or high intensity patient status criteria in accordance with 907 KAR 1:022.

(16) "Licensed marriage and family therapist" or "LMFT" means a person licensed pursuant to KRS 335.260 to 335.499.

(17) "Licensed professional clinical counselor" or "LPCC" means a person licensed pursuant to KRS 335.500 to 335.599.

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

(19) "Mental retardation" means significantly sub-average intellectual functioning, an intelligence quotient of approximately seventy (70) or below; concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social, or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety, with an onset before eighteen (18) years of age.

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

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

(22) "Psychologist" means a person licensed in accordance with KRS 319.050.

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

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

(25) "Registered nurse" or "RN" means a person who is currently licensed pursuant to KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(26) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(27) "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(28) "Social worker" means an individual qualified pursuant to KRS Chapter 335.

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

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

Section 2. SCL Recipient Eligibility, Enrollment and Termination.

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

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

(b) Have been notified of potential SCL funding in accordance with Section 6 of this administrative regulation;

(c) Meet ICF-MR-DD patient status [level-of-care] requirements established in 907 KAR 1:022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 1:050;

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

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

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

3. The MAP-3519 Assessment Form;

4. The level of care determination;

5. [4] The results of a physical examination that was conducted within the last twelve (12) months;

6. [5] A statement for the need for long-term care services which shall be signed and dated by a physician or a QMRP and be less than one (1) year old;

7. [6] The results of a psychological examination completed by a licensed psychologist;

8. [7] A social case history which is less than one (1) year old;

9. [8] A projection of the needed supports and a preliminary MAP-145 SCL plan for meeting those needs; and

10. A MAP-242 documenting an individual's status change;

and

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

(2) To maintain eligibility as an SCL recipient:

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

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:050;

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

(d) An SCL provider shall notify the local DCBS office and the department on a MAP-242 if an SCL recipient is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF-MR-DD facility; or

3. Transferred to another Medicaid waiver program.

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or other facility.

(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services [service] would reasonably be expected to exceed the cost of ICF-MR-DD services [service].

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

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

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

a. A statement signed by the recipient or legal representative;
b. Copies of letters to providers; [and]
c. Copies of letters from providers; and
d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
   a. Sixty (60) days for an individual who does not reside in a facility; or
   b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;
   (b) An SCL recipient or legal representative fails to access the required service as outlined in the ISP for a period greater than sixty (60) consecutive days without good cause shown
   1. The recipient or legal representative shall have the burden of providing documentation of good cause including:
      a. A statement signed by the recipient or legal representative;
      b. Copies of letters to providers; and
      c. Copies of letters from providers.
   2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:
      a. Sixty (60) days for an individual who does not reside in a facility; and
      b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;
   (c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or
   (d) An SCL recipient does not meet ICF-MR-DD patient status [level-of-care] criteria.

(6) Involutary termination of a service to an SCL recipient by an SCL provider shall require:
   (a) Simultaneous notice to the SCL recipient or legal representative and the case manager at least twenty (20) days [support coordinator at least ten (10) days] prior to the effective date of the action, which shall include:
      1. A statement of the intended action;
      2. The basis for the intended action;
      3. The authority by which the action is taken; and
      4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
   (b) Submittal of a DMH-001 to DMHMR at least twenty (20) days prior to the effective date of the intended action; and
   (c) The case manager [support coordinator] in conjunction with the provider to:
      1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
      2. Provide assistance to the SCL recipient in making contact with another SCL provider;
      3. Arrange transportation for a requested visit to an SCL provider site;
      4. Provide a copy of pertinent information to the SCL recipient or legal representative;
      5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured; [and]
      6. Continue to provide supports until alternative services or another placement is secured; and
      7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to DMHMR.
   (a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
   (b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Provider Participation. (1) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:
   (a) Be certified by the department prior to the initiation of the service;
   (b) Be recertified at least annually by the department; and
   (c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20.078.

(3) An SCL provider shall have a governing body that shall:
   (a) Be a legally constituted entity within the Commonwealth of Kentucky;
   (b) Not contain a majority of owners;
   (c) Be responsible for the overall operation of the organization that shall include:
      1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;
      2. Appointing and annually evaluating the executive director;
      3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
      4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
      5. Orienting a new member of the governing body to the operation of the organization.

(4) An SCL provider shall:
   (a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient.
      1. Child;
      2. Parent;
      3. Sibling; or
      4. Spouse;
   (b) Not enroll an SCL recipient for whom they cannot meet the support needs;
   (c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and
   (d) Document any denial of a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:
   (a) An annual review of written policy and procedures;
   (b) A written description of available SCL waiver services;
   (c) A current table of organization;
   (d) A memorandum of understanding with an SCL case management [support coordination] provider with whom they share individual support plans;
   (e) Information regarding satisfaction of an SCL recipient and the utilization of that information; [and]
   (f) A quality improvement program; and
   (g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:
   (a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;
   (b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual who requests it;
   (c) Meet the following requirements if responsible for the management of SCL recipient funds:
      1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
      2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
      3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:
   (a) Support empowerment and informed decision-making;
   (b) Support and assist people to remain connected to natural support networks; and
   (c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal repre
sentative of an SCL recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction by direct care staff;
(c) Require prompt notification of any unusual occurrence,
(d) Require visitation to the SCL recipient at a reasonable time,
without prior notice and with due regard for the SCL recipient's
right of privacy;
(e) Require involvement in decision making regarding the se-
lection and direction of the service provided; and
(f) Consider the cultural, educational, language and socioeco-
nomic characteristics of the family being supported.
(9) An SCL provider shall ensure the rights of an SCL recipient
by:
(a) Making available a description of the rights and the means
by which they can be exercised and supported which shall include:
1. The right to time, space, and opportunity for personal pri-
vacy;
2. The right to communicate, associate and meet privately
with the person of choice;
3. The right to send and receive unopened mail;
4. The right to retain and use personal possessions including
clothing and grooming articles; and
5. The right to private, accessible use of the telephone;
(b) Giving a grievance and appeals system that includes an
external mechanism for review of complaints;
(c) Establishing a human rights committee which shall:
1. Include:
   a. SCL recipient;
   b. Individual not affiliated with the SCL provider; and
   c. Individual who has knowledge and experience in rights is-
issues;
2. Review and approve all ISP's with rights restrictions at least
annually;
3. Review and approve, in conjunction with the SCL recipient's
team, behavior support plans that include highly restrictive proce-
dure or contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL
recipient with no Axis I diagnosis;
(d) Establishing a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior
intervention and is not the behavior specialist who wrote the
behavior support plan;
2. Be separate from the human rights committee;
3. Review and approve prior to implementation and at least
every six (6) months, in conjunction with the SCL recipient's team,
behavior support plans that include highly restrictive procedures or
contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL
recipient with no Axis I diagnosis and recommend an alternative
intervention when appropriate;
(e) Complying with the Americans with Disabilities Act (28
C.F.R. 35).
(10)(a) An SCL provider shall maintain fiscal and service rec-
ords and incident reports for a minimum of six (6) years from the
date that:
1. A covered service is provided; or
2. The recipient turns twenty-one (21), if the recipient is under the
age of twenty-one (21);
(b) All records and incident reports shall be made available to:
1. The department;
2. DMHMR or its designee;
3. The Commonwealth of Kentucky, Cabinet for Health and
Family Services, Office of Inspector General or its designee;
4. The United States General Accounting Office or its designee;
5. The Commonwealth of Kentucky, Office of the Auditor of
Public Accounts or its designee;
6. The Commonwealth of Kentucky, Office of the Attorney
General or its designee;
7. The Commonwealth of Kentucky, Cabinet for Health and
Family Services, Department for Community Based Services
(Families and Children or its designee); or
8. The Centers for Medicare and Medicaid Services.
(11) An SCL provider shall cooperate with monitoring visits
from monitoring agents.
(12) An SCL provider shall maintain a record for each SCL
recipient served that shall:
(a) Be recorded in permanent ink;
(b) Be free from correction fluid;
(c) Have a strike through each error that is initialed and dated;
and
(d) Contain no blank lines in between each entry.
(13) A record of each SCL recipient who is served shall:
(a) Contain all information necessary for the delivery of the
SCL recipient's services;
(b) Be cumulative;
(c) Be readily available;
(d) Contain documentation which shall meet the requirements
of Section 4 of this administrative regulation;
(e) Contain a legend that identifies any symbol and abbrevia-
tions used in making a record entry;
(f) Contain the following specific information:
1. The SCL recipient's name, Social Security number and
Medicaid identification number (MAID);
2. The intake or face sheet;
3. The MAP-351B Assessment form completed at least annu-
ally [self-assessment];
4. An assessment summary relevant to the service area;
5. The current ISP
6. [6] The training objective for any support which facilitates
achievement of the SCL recipient's chosen outcomes [provides
skills training to the SCL-recipient];
7. The service objective for those supports which do not pro-
vide skills training;
8. [8] A list containing emergency contact telephone numbers.
9. [9] The SCL recipient's history of allergies with appropriate
allergy alerts for severe allergies;
10. [10] The SCL recipient's medication record, including a copy
of the prescription or the signed physician's order and the medica-
tion log if medication is administered at the service site;
11. [11] A recognizable photograph that is less than one (1)
year old of the SCL recipient;
12. [12] Legally adequate consent, updated annually, for the
provision of services or other treatment [which shall include those
requiring emergency attention and shall be located at each service
site]
13. [13] The individual educational plan (IEP) or individual
family service plan (IFSP), if applicable;
14. [14] The SCL recipient's social history updated at least
annually;
15. [15] The results of an annual physical exam;
16. [16] The Long Term Care Facilities and Home and Com-
mmunity Based Program Certification Form, MAP-350 updated
annually;
17. [17] Psychological evaluation;
18. [18] Original and current level of care certification; and
19. [19] The MAP-552K, Department for Community Based
Services Notice of Availability for Long Term Care/Waiver
Agency/Hospice Form in the case management and residential
record; and
20. A copy of the approved SCL-1 form;
(a) [a] Be maintained by the provider in a manner to ensure the
confidentiality of the SCL recipient's record and other personal
information and to allow the SCL recipient or legal representative
to determine when to share the information as provided by law;
(b) [b] Have the safety from loss, destruction or use by an
unauthorized person ensured by the provider; and
(c) [c] Be available to the SCL recipient or legal guardian ac-
cording to the provider's written policy and procedures which shall
address the availability of the record; and
(d) Have a corresponding legend which the provider shall make
readily accessible.
(14) An SCL provider shall:
(a) Ensure that each staff, prior to providing direct care to a
recipient, has tested negatively for tuberculosis within the past
twelve (12) months; and
2. Maintain documentation of each staff person's negative tuberculous test,
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(b) Have written personnel guidelines for each employee to include:
1. Salary range;
2. Vacation and leave procedures;
3. Health insurance;
4. Retirement benefits;
5. Opportunity for continuing education; and
6. Grievance procedures;
(c) Provide a written job description for each person which describes the employee's duties and responsibilities;
(d) Annually review each job description;
(e) For each potential employee, prior to employment, obtain a criminal record check from the Administrative Office of the Courts in which the individual resided or worked in during the previous year. For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency;
(f) For twenty-five (25) percent of employees, obtain a criminal record check from the Administrative Office of the Courts, or other state designated equivalent annually, for each state in which the individual resided or worked in during the previous year;
(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers annually thereafter if the individual is placed;
(h) Prior to employment and annually thereafter if the individual is placed;
(i) Not employ or place an individual as a volunteer with a prior conviction of an offense delineated in KRS 17.165(1) through (5) or prior felony conviction; and
(j) Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall:
(a) Have an executive director who:
1. Is qualified with a bachelor's degree in administration or a human services field; or
2. Has a registered nurse; and
3. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;
(b) Have a program director of the SCL waiver program who:
1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;
2. Is a QMIP; and
3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;
(c) Have adequate direct-contact staff who:
1. Is eighteen (18) years or older; and
2. Is at least twenty-one (21) years old; and
3. Is able to adequately communicate with the recipients, staff, and family members;
4. Has a valid Social Security number or valid work permit if not a U.S. citizen; and
5. Has ability to perform required record keeping
(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:
(a) Ensuring the health, safety and welfare of the SCL recipient;
(b) Maintenance of sanitary conditions;
(c) Ensuring each site operated by the provider is equipped with:
1. An operational smoke detector placed in strategic locations; and
2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10B:C;
(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 [°F] degrees Fahrenheit;
(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:
1. Safe storage and use of common household items; and
2. That firearms and ammunition are permitted:
   a. Only in a family care home or an adult foster care home; and
   b. Only if stored separately and under double lock;
(f) Establish written procedures concerning the safe storage of common household items;
(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
(h) [Reserved];
(i) Ensuring that staff administering medication:
1. Have specific training per a PMR-approved curriculum and documented competency in medication administration, medication cause and effect and proper administration and storage of medication;
2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
   a. Be kept in a locked container;
   b. Be kept under double lock;
   c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and
   d. Be documented on a medication administration form and properly disposed of, if discontinued; and
(j) Provide instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;
(k) Include an evacuation drill to be conducted in three (3) minutes or less, [and] documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and
(l) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:
(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;
(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;
(c) Require documentation of all training which shall include:
1. The type of training provided;
2. The name and title of the trainer;
3. The length of the training;
4. The date of completion; and
5. The signature of the trainee verifying completion;
(d) Ensure that each employee prior to independent functioning, completes training which shall include:
1. First aid, which shall be provided by an individual certified as
2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
3. Crisis prevention and management;
4. Identification and prevention of abuse, neglect, and exploitation; and
5. Individualized instruction on the needs of the SCL recipient to whom the trainer provides support.
   (a) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include:
   1. Medication administration training per cabinet-approved curriculum;
   2. Medications and seizures;
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   5. Crisis prevention and management;
   6. Identification and prevention of abuse, neglect, and exploitation; and
   7. Individualized instruction on the needs of the SCL recipient to whom the trainer provides support.
   (b) Ensure that all employees complete core training, consistent with the DMHMR-approved curriculum, no later than six (6) months from the date of employment, which shall include:
   1. Values, attitudes, and stereotypes;
   2. Building community inclusion;
   3. Person-centered planning;
   4. Positive behavior support;
   5. Human sexuality and persons with disabilities;
   6. Self determination; and
   7. Strategies for successful teaching. [Complete Phase I training, consistent with a DMHMR-approved curriculum, prior to working independently, but no later than three (3) months from the date of employment, which shall include:
   1. Individualized instruction on the needs of the SCL recipient to whom the trainer provides support;
   2. Training on the identification and reporting of abuse, neglect, and exploitation;
   3. Introduction to support for an individual with mental retardation or a developmental disability;
   4. Medication and seizures;
   5. Safety awareness;
   6. Recordkeeping; and
   7. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   8. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
   9. Medication administration, which shall be provided by a nurse, pharmacist, or medical doctor.
   (a) Ensure that each employee complete Phase II training, consistent with a DMHMR-approved curriculum, within six (6) months of employment, which shall include:
   1. Introduction to mental retardation and other developmental disabilities;
   2. Values and principles;
   3. Working with a family;
   4. Individualized planning;
   5. Understanding behavior;
   6. Learning to listen;
   7. Health care services;
   8. Social and sexual aspects of life;
   9. Basic home management if the employee has responsibility for:
      a. Laundering;
      b. House cleaning;
      c. Food storage and meal planning; or
   d. An activity in the home, and
   e. Nutrition and meal planning if the employee has responsibility for:
      a. Interaction of common medication with food;
      b. Nutritional needs;
      c. Basic meal planning or
      d. Food storage and handling.
   (a) [9] Not be required to receive the training specified in this section if the provider is:
   1. An occupational therapist providing occupational therapy;
   2. A physical therapist providing physical therapy;
   3. A psychologist or psychologist with autonomous functioning providing psychological services; or
   4. A speech therapist providing speech therapy; and
   (b) [9] Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:
   1. Orientation to the agency;
   2. Individualized Instruction on the needs of the SCL recipient to whom the volunteer provides support;
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
   4. Cardiopulmonary (Cardiopulmonary) resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization.

Section 4. Covered Services. (1) A SCL waiver service shall:
   (a) Be prior authorized by the department; and
   (b) Be provided pursuant to the individual support plan.
   (2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:
   (a) Adult day training which shall:
      1. Support the SCL recipient to participate in daily meaningful routines in the community.
      2. Stress training in:
         a. The activities of daily living;
         b. Self-advocacy;
         c. Adaptive and social skills; and
         d. Vocational skills;
      3. Be provided in a residential or community setting that can:
         a. Be a fixed location; or
         b. Occur in public venues.
      4. Not be diversionary in nature;
      5. Be provided as on-site services which shall:
         a. Include facility-based services provided on a regularly-scheduled basis;
         b. Lead to the acquisition of skills and abilities to prepare the participant for work and/or community participation;
         c. Prepare the participant for transition from school to work or adult support services;
         d. Be provided as off-site services which shall:
            a. Include services provided in a variety of community settings;
            b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
            c. Be designed to result in increased access to community resources without paid supports;
            d. Provide the opportunity for the participant to be involved with other members of the general population;
            e. Be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
            f. Be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and
            g. Be provided as an entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant or recipients;
         7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;
      8. Require that a provider conduct an orientation informing the
recipient of supported employment and other competitive opportunities in the community at least annually:
9. Be provided at a time mutually agreed to by the recipient and provider:
10. Be provided to recipients age twenty-two (22) or older; or
11. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;
12. Be documented by:
   a. A time and attendance record which shall include
      (i) The date of the service;
      (ii) The beginning and ending time of the service;
      (iii) The location of the service, and
      (iv) The signature, date of signature, and title of the individual providing the service; and
   b. A detailed monthly summary staff note which shall include:
      (i) The month, day, and year for the time period covered by each note written;
      (ii) Progress toward outcomes identified in the ISP;
      (iii) Progress, regression, and maintenance toward outcomes identified; and
      (iv) The signature, date of signature, and title of individual preparing the summary staff note;
13. Be limited to five (5) days per week, 256 days maximum per year;
14. Not exceed eight (8) hours per day or forty (40) hours per week; and
15. Not exceed sixteen (16) hours per day when provided in combination with community living supports or supported employment;
   b. An assessment service including a comprehensive assessment which shall:
      1. Identify an SCL recipient's needs and the services that the SCL recipient or his family cannot manage or arrange for on his behalf;
      2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;
      3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;
      4. Be conducted within seven (7) calendar days of receipt of the request for assessment;
      5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his family by the assessor in the SCL recipient's home; and
      6. Not be reimbursable if the Individual does not receive a level of care certification.
   c. A reassessment service which shall:
      1. Determine the continuing need for SCL waiver services;
      2. Be performed at least every twelve (12) months;
      3. Be conducted using the same procedures as for an assessment service;
      4. Be conducted by a SCL case manager and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
      5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and
      6. Not be retroactive;
   d. Behavioral support service which shall:
      1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
      2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors.
   e. Include a functional analysis of the SCL recipient's behavior which shall include:
      a. An analysis of the potential communicative intent of the behavior;
      b. The history of reinforcement for the behavior;
      c. Critical variables that precede the behavior;
      d. Effects of different situations on the behavior; and
      e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
   f. [3] Include the development of a behavioral support plan which shall:
      a. Be developed by the behavioral specialist;
      b. Be implemented by [another] SCL provider staff in all relevant environments and activities;
      c. Be revised as necessary;
      d. Define the techniques and procedures used;
      e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
   g. [6] Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
   h. [g] Reflect the use of positive approaches; and
   i. [9] Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
   j. [4] Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;
   k. [6] Include the monitoring of an SCL recipient's progress which shall be accomplished through:
      a. The analysis of data concerning the frequency, Intensity, and duration of a behavior; and
      b. The reports of an SCL provider involved in implementing the behavioral support plan;
   l. Provide for the design, implementation, and evaluation of systematic environmental modifications;
   m. [6] Be provided by a behavior support specialist who shall have:
      a. A master's degree with formal graduate course work in a behavioral science; and
      b. One (1) year of experience in behavioral programming;
   n. [7] Be documented by a detailed staff note which shall include:
      a. The date of the service;
      b. The beginning and ending time; and
      c. The signature, date of signature and title of the behavioral specialist; and
   o. [8] Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;
   p. Case management which shall be:
      1. Initiation, coordination, implementation, and monitoring of the assessment, assessment, evaluation, intake, and eligibility process;
      2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;
      3. Assisting an SCL recipient and the support team to develop, maintain, update, and monitor the ISP which shall:
         a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;
         b. Be updated at least annually or as changes occur;
         c. Be submitted on the MAP-351B and MAP-145 SCL forms; and
         d. Include the addendum to the ISP and be sent to DMHPR within fourteen (14) days of the effective date that the change occurs with the SCL recipient;
      4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;
      5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;
      6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;
   q. Timely distribution of the ISP, crisis prevention plan, assessment, and other documents to chosen SCL service providers;
   r. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;
   s. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:
      a. Individual-specific;
b. Annually reviewed; and
c. Updated as a change occurs;
10. Assisting an SCL recipient in planning resource use and
   assuming protection of resources;
11. Exclusive of the provision of a direct service to an SCL
   recipient;
12. Monthly face-to-face contact with an SCL recipient;
13. Monitoring the health, safety, and welfare of an SCL recipi-
   ent;
14. Monitoring all of the supports provided to an SCL recipi-
   ent;
15. Establishing a human rights committee which shall:
   a. Include an:
      (i) SCL recipient;
      (ii) Individual not affiliated with the SCL provider; and
      (iii) Individual who has knowledge and experience in human
   rights issues;
   b. Review and approve, prior to implementation, at least
      annually thereafter, all ISPs with rights restrictions;
   c. Review and approve, prior to implementation, at least
      annually thereafter, in conjunction with the SCL recipient's team,
      behavior support plans that include highly-restrictive procedures or
      contain rights restrictions; and
   d. Review the use of a psychotropic medication by an SCL
      recipient with no Axis I diagnosis;
16. Establishing a behavioral intervention committee which shall:
   a. Include one (1) individual who has expertise in behavior
      intervention and is not the behavior specialist who wrote the
      behavior support plan;
   b. Be separate from the human rights committee;
   c. Review and approve, prior to implementation, and at least
      annually thereafter or when changes are needed, in conjunction
      with the SCL recipient's team, all behavior support plans; and
   d. Review the use of a psychotropic medication by an SCL
      recipient with no Axis I diagnosis and recommend an alternative
      intervention when appropriate;
17. Documented by a monthly summary note which shall in-
   clude:
   a. Documentation of monthly contact with each chosen SCL
      provider;
   b. Documentation of monthly face-to-face contact with an SCL
      recipient and
   c. Progress towards outcomes identified in the ISP;
18. Provided by a case manager who shall:
   a. Have a bachelor's degree in a human service;
   b. Be a registered nurse licensed in accordance with KRS
      314.011;
   c. Be a qualified social worker;
   d. Be a licensed marriage and family therapist;
   e. Be a professional clinical counselor;
   f. Be a certified psychologist; or
   g. Be a licensed professional practitioner;
19. Supervised by a case management supervisor who shall
    be a QMHP;
20. Documented by a detailed monthly summary note which
    shall include:
    a. The month, day, and year for the time period each note
       covers;
    b. Progression, regression, and maintenance toward outcomes
       identified in the ISP;
    c. The signature, date of signature, and title of the Individual
       preparing the note;
    d. The provision of support, training, and intervention in the
       areas of:
       a. Self-care;
       b. Sensory/motor development;
       c. Daily living skills;
       d. Communication; and
       e. Adaptive and social skills;
    2. Provided in a nonresidential or community setting;
    3. Provided to enable the recipient to participate in and access
       community resources;
    4. Provided to help remove or diminish common barriers to
       participation in typical roles in community life;
    5. Provided at a time mutually agreed upon by the recipient
       and provider;
    6. Limited to:
       a. Individuals who are in school and up to sixteen (16) years of
          age;
       b. Up to eight (8) hours per day, five (5) days per week; and
       c. Up to sixteen (16) hours per day in combination with com-
          munity living supports; and
    7. Documented by:
    a. A time and attendance record which shall include:
       i. The date of service;
       ii. The beginning and ending time of the service;
       iii. The location of the service; and
       iv. The signature, date of signature, and title of the Individual
          providing the service; and
    b. A detailed monthly staff note which shall include:
       i. The month, day, and year for the time period each note
          covers;
    c. Progress toward outcomes identified in the ISP;
    d. Progression, regression, or maintenance of outcomes
       identified in the ISP; and
    e. The signature, date of signature, and title of the individual
       providing the summary staff note;
22. Community habilitation which shall be:
   1. The provision of support, training, and intervention in the
      areas of:
      a. Self-care;
      b. Daily living skills;
      c. Communication;
      d. Behavioral support;
      e. Social skills; and
      f. Vocational training;
   2. Provided in the community or a nonresidential setting, or
      community setting that can:
      a. Be a fixed location or workshop, or
      b. Occur on public venues;
   3. Provided to enable the SCL recipient to:
      a. Participate in a community plan as a volunteer in a typical
         unpaid position;
      b. Access and utilize community resources; and
      c. Utilize a variety of assistance and training to interact with
         the environment through expressive services which shall be based
         on goals and life therapeutic rather than didactic;
   4. Provided to individuals who are:
      a. Eighteen (18) years of age, or
      b. Sixteen (16) years of age as part of a transition process
         from school to work;
23. Documented by:
    a. A time and attendance record which shall include:
       i. The time, date, month, and year;
       ii. The beginning and ending time;
       iii. The signature, date of signature, and title of the Individual
            providing the service; and
    b. A detailed monthly staff note which shall include:
       i. The time, month, day, and year for each note written;
       ii. The time, month, day, and year for the time period each note
           covers;
    c. Progress toward outcomes identified in the ISP;
    d. Progression, regression, and maintenance toward outcomes
       identified in the ISP; and
    e. The signature, date of signature, and title of the Individual
       providing the summary staff note;
24. Community living supports which shall:
   1. Be provided to facilitate independence and promote integra-
      tion into the community for an SCL recipient residing in his own
      home or in his family's home,
   2. Be supports and assistance which shall not be diversional
      in nature and shall include:
      a. Assistance;
      b. Activity training;
      c. Laundry;
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d. Routine household care and maintenance;
e. Activities of daily living;
f. Personal hygiene;
g. Shopping;
h. Use of money management.
i. Medication management;
j. Socialization;
k. Relationship building;
l. Leisure choices;
m. Participation in generic community activities; [ex]
n. Therapeutic goals; or
o. Nonmedical care not requiring nurse or physician intervention;

2. Not replace other work or day activities;
3. Be provided on a one-on-one basis;
4. Not be provided at an adult day-training or children’s day care community habilitation site;
5. Be documented by:
   a. A time and attendance record which shall include:
      i. The date of the service;
      ii. The beginning and ending time of the service; and
      iii. The signature, date of signature and title of the individual providing the service, and
   b. A detailed monthly summary note which shall include:
      i. The time, month, day and year for the time period covered;
      ii. The time, month, day and year for the time period covered;
      iii. Progress toward outcomes identified in the ISP;
      iv. Progress, regression, and maintenance toward outcomes identified in the ISP; and
      v. The signature, date of signature and title of the individual preparing the summary note;
    6. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children’s day habilitation, and supported employment:
   a. [community habilitation, supported employment and prevention services;
   b. Occupational therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient’s level of functioning by applying diagnostic and prognostic tests;
      2. Physician ordered services in a specified amount and duration to aid an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
      3. Training of other SCL providers on improving the level of functioning;
      4. Exclusion of maintenance or the prevention of progression;
      5. Provided by an occupational therapist; and
      6. Documented by a detailed staff note which shall include:
         a. Progress toward outcomes identified in the ISP;
         b. The date of the service,
         c. Beginning and ending time; and
         d. The signature, date of signature and title of the individual providing the service;
   c. Physical therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
      2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
      3. Training of another SCL provider on improving the level of functioning;
      4. Exclusive of maintenance or the prevention of progression;
      5. Provided by a physical therapist; and
      6. Documented by a detailed staff note which shall include:
         a. Progress made toward outcomes identified in the ISP;
         b. The date of the service;
         c. Beginning and ending time of the service, and
         d. The signature, date of signature and title of the individual providing the service;
   d. A recreational service which shall be:
      1. Designed to prepare an SCL recipient for paid or unpaid employment through activities that are not job-specific, including:

   e. Supporting the SCL recipient to understand the meaning, value and demands of work;
   f. Teaching social and communication skills;
   g. Teaching habilitative goals;
   h. Teaching work performance skills;
   i. Teaching in the work environment;
   j. Provided to an SCL recipient who is not expected to be able to join the general workforce within one (1) year;
   k. Under a program funded by either the Rehabilitation Act of 1973 (20 U.S.C. Chapter 14) or Pub. L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient’s file;
   l. Provided on a one-to-one basis;
   m. Documented by:
      1. A time and attendance record which shall include:
         i. The date of the service;
         ii. The beginning and ending time, and
         iii. The signature, date of signature and title of the individual providing the service; and
      2. A detailed monthly summary note which shall include:
         i. The time, month, day and year for each note written;
         ii. The time, month, day and year for the time period covered;
         iii. Progress toward outcomes identified in the ISP; and
         iv. The signature, date of signature and title of the individual preparing the note; and
      3. Limit to forty (40) hours per week alone or in combination with community habilitation;
   n. Psychological services which shall:
      1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;
      2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;
      3. Include:
         a. The administration of psychological testing;
         b. Evaluation;
         c. Diagnosis; and
         d. Treatment;
      4. Be incorporated into the ISP with input from the psychological service provider for the development of program-wide support; and
      5. Be provided by a psychologist or a psychologist with autonomous functioning; and
   o. Be documented by a detailed staff note which shall include:
      1. The time, month, day and year for each note written;
      2. A staffed residence which shall not have greater than three (3) [SCL] recipients of publicly-funded supports in a home rented or owned by the SCL provider;
      3. A group home which shall be licensed in accordance with 902 KAR 20.079 and shall not have greater than eight (8) [three (3)] SCL recipients; [unless an individual residing in the group home who is not an SCL recipient receives notification of SCL funding and desire to continue living in the group home];
      4. A family care home which shall not have greater than three (3) [SCL] recipients of publicly-funded supports living in the home; or
      5. An adult foster care home which shall not have greater than three (3) [SCL] recipients of publicly-funded supports aged eighteen (18) or over living in the home;
      6. Utilize a modular home only if the:
         a. Wheels are removed;
         b. Home is anchored to a permanent foundation; and
         c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;
      3. If provided via a modular home, have 180 days from the effective date of this administrative regulation to meet the modular home requirements;
      4. Not utilize a motor home;
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5. Provide a sleeping room which ensures that an SCL recipient:
   a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;
   b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;
   c. Does not share a room with an individual who presents a potential threat; and
   d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;

6. Provide assistance with daily living skills which shall include:
   a. Ambulation;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning and preparation;
   h. Laundry;
   i. Budgeting and financial matters; [aw]
   j. Home care and cleaning; or
   k. Medication management;

7. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the Individual Support plan;

8. Provide or arrange for transportation to services, activities, and medical appointments as needed;

9. Include participation in medical appointments and follow-up care as directed by the medical staff, and

10. Be documented by a detailed monthly summary note which shall include:
   a. [The] time, month, day and year for each notation written;
   b. The [time] month, day, and year for the time period the note covers;
   c. Progression, regression and maintenance toward outcomes identified in the ISP;
   d. Pertinent information regarding the life of the SCL recipient; and
   e. The signature, date of signature, and title of the individual preparing the staff note;

f. [if] Respite service which shall be:
   1. Provided only to an SCL recipient unable to independently administer self-care;
   2. Provided in a variety of settings;
   3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;
   4. Provided only to an SCL recipient who resides in a family care home, adult foster care home, or his or her family's home;
   5. Limited to 1440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time; and
   c. The signature, date of signature and title of the individual providing the service;

7. [if] Specialized medical equipment and supplies which shall:
   a. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
   2. Enable an SCL recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;
   3. Be ordered by a physician and submitted on a MAP-95;
   4. Include equipment necessary to the proper functioning of specialized items;
   5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;
   6. Meet applicable standards of manufacture, design and installation; and
   7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

8. [if] Speech therapy which shall be:
   a. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;
   2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;
   3. Training of other SCL providers on improving the level of functioning;
   4. Exclusive of maintenance or the prevention of regression;
   5. Be provided by a speech therapist;
   6. Documented by a detailed staff note which shall include:
      a. Progress toward outcomes identified in the ISP;
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature, date of signature and title of the individual providing the service;
   7. Initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;
   8. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;
   9. Assisting an SCL recipient in the development, update and monitor the ISP which shall:
      a. Be initially developed within thirty (30) days of the initiation of the service;
      b. Be updated at least annually; and
      c. Include the addenda to the ISP and be sent to DMHMR within fourteen (14) days of the effective date the change occurs with the SCL recipient;
   10. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referral and information;
   11. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area,
   12. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and any change to the selection of an SCL provider and the reason for the change;
   13. Timely distribution of the ISP, case prevention plan, assessment, and other documents to chosen SCL service providers;
   14. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a support coordination staff person;
   15. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:
      a. Individual-specific;
      b. Annually reviewed; and
      c. Updated as a change occurs;
   16. Assisting an SCL recipient in planning resources use and assuming protection of resources;
   17. Exclusive of the provision of a direct service to an SCL recipient;
   18. Monthly face-to-face contact with an SCL recipient;
   19. Monitoring the health, safety and welfare of an SCL recipient;
   20. Monitoring of the supports provided to an SCL recipient;
   21. Documented by a monthly summary note which shall include:
      a. Documentation of monthly contact with each chosen SCL provider;
      b. Documentation of monthly face-to-face contact with an SCL recipient; and
      c. Progress towards outcomes identified in the Individual Support Plan;
   22. Provided by a support coordinator/case manager who shall have a bachelor's degree in a human service;
   23. Supervised by a support coordination/case manager supervisor who shall be a QMPP;
   24. Documented by a detailed monthly summary note which shall include:
      a. The time, month, day and year for each note written;
      b. The time, month, day and year for the time period the note covers;
      c. Progression, regression and maintenance toward outcomes identified in the ISP; and
      d. The signature, date of signature and title of the individual preparing the note;
(o) [em] Supported employment which shall be:
1. Intensive, ongoing support for an SCL recipient to maintain
   paid employment in which an individual without a
   disability is employed;
2. Provided in a variety of settings;
3. Provided on a one-to-one (1 to 1) basis;
4. Unavailable under a program funded by either the Rehabili-
   tation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 89-457 (34
   C.F.R. Subtitle B, Chapter III), proof of which shall be documented
   in the SCL recipient's file;
5. Exclusive of work performed directly for the supported em-
   ployment provider;
6. Provided by a certified job coach;
7. Documented by:
   a. A time and attendance record with shall include:
      (i) The date of service;
      (ii) The beginning and ending time; and
      (iii) The signature, date of signature, and title of the individual
      providing the service;
   and
   b. A detailed monthly summary note which shall include:
      (i) [The time, month, day and year for each note written;]
      (ii) The [time, month, day, and year for the period the
      note covers;]
      (iii) Progression, growth and maintenance in outcomes
      identified in the ISP; and
      (iv) The signature, date of signature and title of the indi-
      vidual providing the note;
   and
   8. [7] Limited to forty (40) hours per week alone or in combi-
      nation with adult day training [community habilitation].

Section 5. Incident Reporting Process. (1) An incident shall be
documented on an incident report form.
(2) There shall be three (3) classes of incidents including:
(a) A class I incident which shall:
   1. Be minor in nature and not create a serious consequence;
   2. Not require an investigation by the provider agency;
   3. Be reported to the case manager [support coordinator] within twenty-four (24) hours;
   4. Be reported to the guardian as directed by the guardian;
   5. Be retained on file at the provider and case manager [support coordinator] agency; and
   6. If a medication error which does not require medical treat-
   ment be reported to the Assistant Director of the Division of Mental
   Retardation, DMHR or its designee, on a the monthly medication
   error report form by the tenth of the following month [Be reported to the
   Assistant Director of the Division of Mental Retardation, DMHR or its designee, within ten (10) calendar days of discovery.
   If the incident involves the use of restraint or a medication error,
   and shall include a complete written report of the incident follow-
   up];
   (b) A class II incident which shall:
      1. Be serious in nature;
      2. Involve the use of physical or chemical restraint;
      3. Involve a medication error resulting in a physician or emer-
         gency room visit;
      4. Require an investigation which shall be initiated by the pro-
         vider agency within twenty-four (24) hours of discovery, and shall
         involve the case manager [support coordinator] and
         5. [3] Be reported by the provider agency to:
            a. The case manager [support coordinator] within twenty-four
               (24) hours of discovery;
            b. The guardian within twenty-four (24) hours of discovery;
            c. The assistant director of the Division of Mental Retardation,
               DMHR, or designee, within ten (10) calendar days of discovery,
               and shall include a complete written report of the incident inves-
               tigation and follow up; and
            (c) A class III incident which shall:
               1. Be grave in nature;
               2. Be a medication error that occurs over multiple days or re-
                  sults in a delay in obtaining critical medications;
               3. Be a medication error resulting in harm or hospitalization of
                  the individual;
               4. Be immediately investigated by the provider agency, and the
                  investigation shall involve the case manager [support coordi-
                  nator] and
                  5. [3] Be reported by the provider agency to:
                     a. The case manager [support coordinator] within eight (8)
                        hours of discovery;
                     b. The guardian within eight (8) hours of discovery;
                     c. DCBS immediately upon discovery, if involving suspected
                        abuse, neglect, or exploitation in accordance with KRS Chapter
                        209; and
                     d. The assistant director of the Division of Mental Retardation,
                        DMHR, or designee, within eight (8) hours of discovery and shall
                        include a complete written report of the incident investigation and
                        follow-up within seven (7) calendar days of discovery. If the inci-
                        dent occurs after 5 p.m. EST on a weekday, or occurs on a week-
                        end or holiday, notification to DMHR shall occur on the following
                        business day.

(3) All medication errors shall be reported to the Assistant Di-
rector of the Division of Mental Retardation, DMHR, or designee
on a monthly medication error report form by the tenth (10th) of
the following month.

Section 6. SCL Waiting List. (1) An individual applying for SCL
waiver services shall be placed on a statewide waiting list which
shall be maintained by the department.
(2) An individual shall be placed on the SCL waiting list based
 upon his or her region of origin in accordance with KRS 205 6317(3) and
(4).
(3) In order to be placed on the SCL waiting list, an individual
shall submit to the department a completed MAP-620, Application
for MR/DD Services, which shall include a signature from a physi-
-
1. The individual is currently receiving a service through another funding source that meets his or her needs;
2. The individual is not currently receiving a service and does not currently need the service;
3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or
4. The individual is less than twenty-one (21) years of age.

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

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

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

Maintenance of the SCL waiting list shall occur as follows:
(a) During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone in person for validation to determine category of need;
(b) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region, and
(c) The department shall, at a minimum, annually update the waiting list during the birth month of an individual. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter.

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

Section 7, Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.
(2) A SCL service provider choosing to utilize electronic signatures shall:
(a) Develop and implement a written security policy which shall:
   1. Be adhered to by all of the provider's employees, officers, agents, and contractors;
   2. Stimulate which individuals have access to which electronic signature(s) and password authorization; and
   3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form which shall:
   1. Be completed and executed by each individual utilizing an electronic signature;
   2. Attest to the signature's authenticity; and
   3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
   (c) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 8, Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.
(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:571.
(4) An individual shall not appeal a category of need specified in Section 6 of this administrative regulation.

(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.
VOLUME 32, NUMBER 11 – MAY 1, 2006

MARK D. BIRDWHISTEL, Secretary
MIKE BURNSIDE, Deputy Secretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: March 29, 2006

FILED WITH LRC: April 4, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, 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 May 15, 2006, 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 May 31, 2006. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-5, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Supports for Community Living (SCL) covered services, coverage provisions, and provider qualifications.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish SCL covered services, coverage provisions, and provider qualifications.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing SCL covered services, coverage provisions, and provider qualifications.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing SCL covered services, coverage provisions, and provider qualifications.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(i) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the allowed capacity in group homes for supports for community living (SCL) service recipients, as well as reconciles the regulation with federally-approved modifications to the SCL waiver program. Modifications include adding assessment and reassessment of an individual to establish a care plan, additional documentation requirements, revised various training requirements, as well as adding a criminal record check requirement for volunteers.
(ii) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to protect the health, safety, and welfare of individuals displaced from an Intermediate-care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD).
(iii) 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 increasing the allowed capacity in group homes for SCL service recipients.
(iv) 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 increasing the allowed capacity in group homes for SCL service recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The affected entities include all group homes as well as SCL recipients; particularly those displaced from an ICF-MR-DD.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation if new, or by the change if it is an amendment. The amendment to this administrative regulation will increase the capacity for SCL service recipients in group homes and thus help accommodate SCL recipients, particularly those displaced from an ICF-MR-DD.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) is unable to accurately predict the fiscal impact of the amendment at this time, given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.
(b) On a continuing basis: DMS is unable to accurately predict the fiscal impact of the amendment at this time, given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are the funding sources utilized to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or increase any fees.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Long Term Care and Community Alternatives
(>Amendment<)

907 KAR 1:155. Payments for supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n
NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-444; effective May 14, 2004, reorganized the Cabinet for Health and Family Services and placed the Division of 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, is required 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 opportunistically presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the reimbursement provisions relating to home and community based waiver services provided to an individual with mental retardation or a developmental disability as an
alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.
(2) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of support services needed by an individual with a disability
(3) "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.
(4) "Supports for community living" or "SCL" means community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service as provided in subsection (2) of this section provided to a Medicaid recipient who:
(a) Meets the criteria as established in 907 KAR 1:022 and 907 KAR 1:026;
(b) Is authorized for an SCL service by the department;
(c) Is provided in the individual support plan as identified in 907 KAR 1:145; and
(d) Is a part of a unit of service which one unit equals one item as provided in Section 3 of this administrative regulation.

Section 3. SCL Reimbursement. [Specialized medical equipment and supplies shall be:
(1) Specialized medical equipment and supplies shall:
(a) Be supplied through the Medicaid Durable Medical Equipment, Vision, Hearing, or Dental Programs pursuant to 907 KAR 1:026, and 907 KAR 1:026;
(b) Be ordered by a physician;
(c) Be specified in the individual support plan as identified in 907 KAR 1:145;
(d) Be a part of a unit of service in which one unit equals one item as provided in Section 3 of this administrative regulation; and
(e) Be submitted on form MAP-95;
(f) Be reimbursed:
1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and
2. Based on the submission of three (3) price estimates of which the lowest will determine the amount of reimbursement; and
(g) Not include furniture, a recreational item, or a leisure item.
(2) A functional analysis to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.
(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.
(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult day training on-site</td>
<td>15 minutes</td>
<td>$2.50</td>
</tr>
<tr>
<td>Adult day training off-site</td>
<td>15 minutes</td>
<td>$3.00</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>24 hours</td>
<td>$112.49($64.26)</td>
</tr>
<tr>
<td>Assessment/reassessment</td>
<td>One assessment or reassessment</td>
<td>$75.00</td>
</tr>
<tr>
<td>Behavior support</td>
<td>15 minutes</td>
<td>$33.25</td>
</tr>
<tr>
<td>Casework</td>
<td>1 month</td>
<td>$37.60</td>
</tr>
<tr>
<td>Children’s Day habilitation</td>
<td>15 minutes</td>
<td>$2.50($2.66)</td>
</tr>
<tr>
<td>Community living</td>
<td>15 minutes</td>
<td>$5.54</td>
</tr>
<tr>
<td>Family home</td>
<td>24 hours</td>
<td>$112.49($64.26)</td>
</tr>
<tr>
<td>Group HOME</td>
<td>24 hours</td>
<td>$126.35($66.60)</td>
</tr>
<tr>
<td>Occupational therapy</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Physical therapy</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Psychological services</td>
<td>15 minutes</td>
<td>$38.79</td>
</tr>
<tr>
<td>Respite</td>
<td>15 minutes</td>
<td>$2.77</td>
</tr>
<tr>
<td>Specialized medical equipment and supplies</td>
<td>1 item</td>
<td>Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.</td>
</tr>
<tr>
<td>Speech therapy</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Staffed residence</td>
<td>24 hours</td>
<td>$186.48</td>
</tr>
<tr>
<td>[Support coordination]</td>
<td>1 month</td>
<td>$382.31</td>
</tr>
<tr>
<td>Supported employment</td>
<td>15 minutes</td>
<td>$5.54</td>
</tr>
</tbody>
</table>

(1) Adult day training on-site and off-site shall be limited to: (a) Forty (40) hours (160 units) per week; and
(b) 205 days per calendar year with the specific days established in the individual support plan and approved by the department.

(2) Children’s day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider may receive an intensity payment.
(2) An intensity payment for a unit of service shall be:
(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;
(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and
(c) For the following SCL services:
1. Staffed residence;
2. Community living;
3. Respite;
4. Family homes;
5. Adult foster care home;
6. Adult foster care home-
7. Community habilitation.
(3) An intensity payment for a unit of service shall be as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Intensity Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffed residence</td>
<td>$33.69</td>
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<tr>
<td>Community living support</td>
<td>$0.83</td>
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<tr>
<td>Respite</td>
<td>$0.42</td>
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<tr>
<td>Family home</td>
<td>$16.87($8.44)</td>
</tr>
<tr>
<td>Group home</td>
<td>$25.27($12.97)</td>
</tr>
<tr>
<td>Adult foster care</td>
<td>$16.87($8.44)</td>
</tr>
<tr>
<td>[Community habilitation]</td>
<td>$0.40</td>
</tr>
</tbody>
</table>

Section 6. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:
(a) By the department [as its designee]; and
(b) In accordance with the NC-SNAP Instructor’s Manual.
(2) A new NC-SNAP may be administered:
(a) At the department’s discretion; or
(b) At the timely request of an SCL provider if a change in the recipient’s circumstance results in the need of increased or decreased supportive services.
(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:
(a) In accordance with subsection (2)(b) of this section; or
(b) As a result of an appeal filed in accordance with Section 8(1) of this administrative regulation.

Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 8. Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider’s reimbursement level.
(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.
(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.
(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-95 Request for Equipment Form" Department for Medicaid Services, "September 2002 Edition";
(b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", "2000 Edition", copyright Medicaid Center Foundation; and
(c) "NC-SNAP Instructor's Manual", copyright 1999, Medicaid Center Foundation.

(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, J.D., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: March 29, 2006
FILED WITH LRC: April 4, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006, five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 May 31, 2006. Please 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, (502) 564-6204

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for supports for community living (SCL) services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for SCL services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for SCL services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for SCL services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases reimbursement for group homes as a result of increasing the capacity for group homes to serve supports for community living (SCL) recipients. Group home reimbursement is also due an increase to more appropriately align it with group home provider costs. Group home capacity was increased via a companion administrative regulation, 907 KAR 1:145, to accommodate individuals who may be displaced from an intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR/DD). Family home and adult foster care home reimbursement rates are also being increased to ensure provider viability. Additionally, the companion administrative regulation eliminates coverage of community habitation services and provocation services but establishes coverage of assessment and reassessment services, adult day training services, and children’s day habilitation services. This administrative regulation is being amended to respectively eliminate or add reimbursement for the aforementioned services.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring adequate residential options for individuals who experience a mandatory displacement from an intermediate care facility for individuals with mental retardation or a developmental disability.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 50 group homes enrolled in the Medicaid Program.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Group homes, adult foster care homes, and family care homes will receive a higher reimbursement for SCL services as a result of this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) is unable to accurately predict the fiscal impact of the amendment at this time given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.
(b) On a continuing basis: DMS is unable to accurately predict the fiscal impact of the amendment at this time given that it is unable to predict utilization for the newly implemented services as opposed to services being eliminated from the waiver program.
(c) 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 state matching funds from general fund and restricted fund appropriations, and revenues from the Medicaid Assistance Revolving Trust Fund (MART) are utilized to fund the this administrative regulation.
VOLUME 32, NUMBER 11—MAY 1, 2006

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(Amendment)


RELATES TO: KRS 210.700-210.760; EO-9004-726
NECESSITY, FUNCTION, AND CONFORMITY: EO-9004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Mental Health and Mental Retardation Services under the Cabinet for Health and Family Services. KRS 210.710 and 210.720 requires the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" in compliance with KRS 210.710 to KRS 210.760.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicaid or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:
(a) Salaries;
(b) Wages;
(c) Self-employed gross revenues, less operating expenses;
(d) Benefit payments, except for Supplemental Security Income payments:
(i) Social Security payments;
(ii) Rents;
(iii) Royalties;
(iv) Pensions;
(j) Retirement payments;
(k) Veteran's Administration payments;
(l) Black lung benefits;
(m) Railroad retirement benefits;
(n) Gifts;
(o) Trust receipts;
(p) Alimony, but does not include child support payments;
(q) Interest income; and
(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9002(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD." Form. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, the refusal shall be noted on the form along with the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:
(a) The cost per patient day in accordance with 908 KAR 3 050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or
(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:
(a) Insurance and third-party payors;
(b) Income received or expected to be received during the period of hospitalization; and
(c) Available assets.

(5) The following shall be allowed deductions from income:
(a) Federal income taxes;
(b) State income taxes;
(c) Social security taxes;
(d) Normal retirement contributions;
(e) Unpaid medical and dental bills;
(f) Health insurance premiums;
(g) Medicare Part B insurance premiums;
(h) Long-Term Care insurance premiums;
(i) A personal needs allowance of forty (40) dollars per month;
(j) Tuition loan payments;
(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;
(l) Child support payments;
(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and
(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in Table 1 of Section 3 of this administrative regulation for the size of the patient's family. If the following conditions are met:
1. The patient was maintaining a residence immediately prior to admission;
2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort; or
3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration, and
4. Eadwards used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five
percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to $1,500 per family member;
(b) Automobiles;
(c) Housing structures;
(d) Land;
(e) Retirement accounts;
(f) Pension funds;
(g) Trust funds that cannot (cannot) be accessed;
(h) The applicable amount contained in Table II of Section 3 of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n) of this section; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay.

(1) The facility shall calculate the ability to pay amount utilizing either the "ABILITY TO PAY WORKSHEET" or the "DEDUCTIBLE ABILITY TO PAY WORKSHEET" as appropriate:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(3) of this administrative regulation;

(c) Subtract the allowed deductions from income, and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient;

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 506 KAR 3 050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles.

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets;

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility;

(d) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for the mentally retarded, or psychiatric hospital in accordance with 907 KAR 1 655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6) After the ability to pay is determined for the patient or person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

<table>
<thead>
<tr>
<th>TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size of Family</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>1</td>
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<tr>
<td>2</td>
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<td>3</td>
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<td>7</td>
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<td>8</td>
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</table>

*For each additional dependent, add $3,400 (5,460).

<table>
<thead>
<tr>
<th>TABLE II. ABILITY TO PAY ASSETS TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size of Family</td>
</tr>
<tr>
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<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
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<tr>
<td>4</td>
</tr>
</tbody>
</table>

*For each additional dependent, add fifty (50) dollars.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

(a) Income revisions;

(b) Asset revisions including exhaustion of available assets;

(c) Change in allowed deductions;

(d) Change in a dependent of the patient or person responsible for the patient; or

(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments to the facility;

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, they may appeal the determination to the facility director or their designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.
(b) The facility director or their designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, they may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administrations and Financial Management, 100 Fair Oaks Lane, 4th Floor (4E-A), Frankfort, Kentucky 40621-0001 who shall arrange for an administrative hearing in accordance with KRS Chapter 138.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

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

(a) MHRM 3:060-1 *ABILITY TO PAY WORKSHEET (March 2006) [(August 2004)].

(b) MHRM 3:060-2 *DEDUCTIBLE ABILITY TO PAY WORKSHEET (March 2006) [(August 2004)].

(c) MHRM 3:060-3 *PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT (August 2004).

(d) MHRM 3:060-4 *PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD (March 2006) [(August 2004)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001 Monday through Friday 8 a.m. to 4:30 p.m.

JOHN M. BURT, Ed D, Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTEL, Secretary
APPROVED BY AGENCY: March 29, 2005
FILED WITH LEG: March 30, 2006 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2006. A representative of the agency present at the hearing will provide any information to any person present. Any person attending the hearing is encouraged to provide the hearing officer with comments in writing.

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

(a) Initially: None

(b) On a continuing basis: None

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to print forms, as needed, which will include the regulation. The amendment will specifically charge patients fees.

(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. The amendment to this administrative regulation does not increase fees to a patient or to the cabinet. The cabinet may realign increased revenues as the entire financial resources of a patient are identified.

(7) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation, because the "means test" to determine ability to pay applies equally to all patients.
VOLUME 32, NUMBER 11 – MAY 1, 2006

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

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


STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2) [438.250, 194A.050(2), 194.094, 194A.002(2), 7 C.F.R. 271.4, 273.15]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Food Stamp Program. 7 C.F.R. 273.15 requires the agency administering the Food Stamp Program to provide a hearing process for individuals accused of intentionally violating a Food Stamp Program regulation and its implementing regulations and policies.

In accordance with KRS 194A.050(1), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

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

Section 3. Notification. (1) Form FS-60, "Notice of Suspected Intentional Food Stamp Program Violation," shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;
(b) Amount and period of the overpayment for the suspected IPV; and
(c) Household's right to an administrative disqualification hearing.

The cabinet shall provide an individual suspected of an IPV a form FS-60, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing," which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

If the household does not return the FS-60 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(a)(10).

In accordance with KRS 13B.120, the administrative disqualification hearing notice shall be sent:

(a) By certified mail;
(b) To the addresser only; and
(c) With a return receipt requested.

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

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

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

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(a)(3)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and
(b) Issue a final order pursuant to the provisions established in 921 KAR 3 070, Section 16.

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

(a) Once (1) time, and
(b) For no more than thirty (30) days.

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

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

If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

(a) Proceed without household representation because the hearing officer believes the notices were received by the individual or
(b) Be conducted because the hearing notice or return receipt is annotated as unclaimed or undeliverable.

In accordance with 7 C.F.R. 273.16(a)(4), the cabinet shall conduct a new hearing if the:

(a) Household was not represented at the hearing;
(b) Individual was determined to have committed an IPV; and
(c) Hearing officer later determines the household had good cause. In accordance with 921 KAR 3 070, Section 8(2), for not appearing.

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

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;
(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-60, Sup-
(c) Individual completing, signing, and returning the form FS-111. "Deferred Adjudication Disqualification Consent Agreement", pursuant to Section 7 of this administrative regulation.

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

(a) Reinsert the individual's eligibility, and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

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

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

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

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

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing; or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

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

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

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

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


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

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A hearing officer's determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 138.140.

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

(a) "FS-80, Notice of Suspected Intentional Food Stamp Program Violation, edition 7/06."

(b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, edition 7/06." and

(c) "FS-111, Deferred Adjudication Disqualification Consent Agreement, edition 7/06." (Except as provided by subsection (3) of this section, an administrative disqualification hearing shall be initiated by the cabinet if it has documented evidence to prove that a household member has committed an act of intentional program violation, pursuant to 721-KAR 3.070.

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

(3) The cabinet may refer the claim to the following for investigation and prosecution by a court of competent jurisdiction, the:

(a) Office of Inspector General, or OIG; or

(b) Office of the Attorney General, or OAG.

(4) If the OIG or OAG determines that the facts of the intentional program violation do not warrant prosecution by a court of the appropriate jurisdiction, the cabinet shall initiate an administrative disqualification hearing pursuant to the administrative regulation.

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state-level administrative disqualification hearings that shall be heard by a fair hearing official.

(a) The hearing shall be conducted by an impartial official who:

1. Does not have a personal stake or involvement in the case;

2. Is not directly involved in the initial determination that the household member had committed intentional program violation; and

3. Is not the immediate supervisor of the case worker who took the action.

(2) The powers and duties of the hearing official shall be the same as those established in 721-KAR 3.070, Section 13.

(3) The hearing shall be conducted by a fair hearing official who:

(a) Is not the immediate supervisor of the case worker who took the action.

(b) Has no personal stake or involvement in the case;

(c) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(d) Has no personal interest in the case.

(5) The hearing shall be conducted by a fair hearing official who:

(a) Has no personal stake or involvement in the case;

(b) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Has no personal interest in the case.

(6) The hearing shall be conducted by a fair hearing official who:

(a) Has no personal stake or involvement in the case;

(b) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Has no personal interest in the case.

(7) The hearing shall be conducted by a fair hearing official who:

(a) Has no personal stake or involvement in the case;

(b) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Has no personal interest in the case.

(8) The hearing shall be conducted by a fair hearing official who:

(a) Has no personal stake or involvement in the case;

(b) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Has no personal interest in the case.

(9) The hearing shall be conducted by a fair hearing official who:

(a) Has no personal stake or involvement in the case;

(b) Is not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Has no personal interest in the case.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member with respect to intentional program violation at least thirty (30) days prior to the date of the administrative disqualification hearing.

(2) The notice shall be sent certified mail, addressed only, return receipt requested, and shall comply with the requirements of KRS 138.050 and shall contain the following:

(a) A summary of the evidence;

(b) A statement that the decision shall be based solely on information provided by the Food Stamp Office or the household member fails to appear at the hearing;

(c) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(d) A statement that a determination of intentional program violation which shall result in disqualification penalties as described in Section 10 of this administrative regulation and a statement of which penalty is applicable to the case scheduled for a hearing;

(e) A listing of the household member's rights as contained in 721-KAR 3.070, Section 13;

(f) A statement that the hearing shall not preclude the state or federal government from:

1. Proceeding for intentional program violation in a civil or criminal court action; or

2. Collecting the overpayment of benefits in accordance with KRS 218.160 and 218.165.

(g) If there is an individual or organization available that provides free legal representation, a statement of the availability of the service.
Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient, or a party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a written or oral document into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of evidence may result in the exclusion of the evidence from the record.

(5) If the household member or his representative does not appear for a face-to-face or telephone hearing, the cabinet shall determine whether proper advance notice was received by the household member pursuant to KRS 13B-060.

(a) If there is no proof that the household member received a timely notice of the hearing, the hearing shall not be conducted.

(b) If the hearing officer determines that the household member who did not appear is situationally unable to appear, the hearing shall be conducted.

(6) A hearing officer shall be present at the hearing.

(7) An administrative disqualification hearing shall comply with the requirements of KRS 13B-060 and 13B-069.

(8) If the household member is found to have committed an intentional program violation, and an administrative hearing officer later determines that the household member or representative had good cause for not appearing pursuant to KRS 3070.52, Section 10:

(a) The previous decision shall not remain valid.

(b) The cabinet shall conduct a new hearing.

(c) The hearing officer who originally ruled on the case may not conduct the new hearing.

(d) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(9) A hearing officer shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A suspended intentional program violation shall not affect the individual’s or the household’s right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household without regard to the suspended intentional program violation until:

(a) The hearing officer or a court of appropriate jurisdiction finds that the individual has committed intentional program violation.

(b) The individual has completed and filed with the department form FS 80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing," waiving his right to an administrative disqualification hearing; or

(c) The individual has completed and filed with the department form FS 111, "Deferred-Adjudication Disqualification Consent Agreement," and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing officer shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation pursuant to KRS 3070.52, Section 1(28).

(2) The decision of the hearing officer shall:

(a) Specify the reasons for the decision;

(b) Identify the;

(c) Supporting evidence;

(2) Kentucky statutory citations, if applicable;

(3) State administrative regulation; and

(4) Corresponding federal regulation.

(a) Respond to relevant arguments made by the household member or representative.

(3) The case record shall be retained by the cabinet until all appeals have been exhausted.

(a) The contents of the case record shall comply with KRS 13B-130.

(b) The record shall be available to the household or its representative during working hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights to appeal the decision pursuant to KRS 13B-140.

(c) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification;

(c) Advise the household member when the disqualification shall take effect;

(2) A notice shall be provided to other remaining household members informing them of:

(a) The allotment they shall receive during the disqualification period; or

(b) That they may reappraise because their certification period has expired.

(4) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearing. (1) An individual accused of intentional program violation shall be allowed to waive his right to an administrative disqualification hearing if he completes and files with the department form FS 80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing".

(2) The cabinet must ensure that:

(a) The appropriate field services supervisor or designated cabinet representative reviews the evidence against the household member suspected of an intentional program violation;

(b) A decision is obtained that the evidence warrants scheduling a disqualification hearing; and

(c) Written notification is provided to the household member suspected of intentional program violation, informing him of his right to waive an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to complete and file with the department form FS 111, "Deferred Adjudication Disqualification Consent Agreement," if there is a deferred adjudication.

(2) The cabinet shall accept a completed form FS 111, "Deferred Adjudication Disqualification Consent Agreement," if a determination of guilt is not obtained from a court because the accused individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation pursuant to the administrative regulation shall be ineligible to participate in the Food Stamp Program:

(a) Except as provided in subsections (2) through (5) of the section, a period of one (1) year upon the first occurrence of intentional program violation;

(b) Except as provided in subsections (2) through (5) of the section, a period of two (2) years upon the second occurrence of intentional program violation; and

(c) Permanently upon the third occurrence of intentional program violation.

(2) An individual found by a federal, state or local court to have
committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of a controlled substance, pursuant to 21 U.S.C. 802, shall be ineligible to participate in the program;

(a) For a period of two (2) years upon the first occurrence of the violation; and

(b) Permanently upon the second occurrence of the violation.

(2) An individual found by a federal, state, or local court to have committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occurrence of the violation.

(3) An individual convicted by a federal, state, or local court of having trafficked food stamp benefits for an aggregate amount of $500 or more shall be permanently ineligible to participate in the program upon the first occurrence of the violation.

(4) An individual convicted by a federal, state, or local court of having trafficked food stamp benefits for an aggregate amount of $500 or more shall be permanently ineligible to participate in the program, and the court shall make a finding that the individual engaged in the conduct pursuant to subsections (2) and (3) of this section.

(5) If a court fails to impose a disqualification period for an intentional program violation, the court shall impose the appropriate disqualification penalty pursuant to subsections (1), (2), (3), (4), and (6) of this section, unless it is contrary to the court order.

(6) On (1) or more intentional program violations which occurred prior to April 1, 1983 shall be considered as only one (1) previous disqualification if determining the appropriate penalty to impose in a case under consideration.

(7) Regardless of whether an action was taken by an individual that caused an intentional program violation to occur, the disqualification periods pursuant to subsections (2) and (3) of this section shall apply to a case in which the court makes the requisite finding on or after September 1, 1994.

(8) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation;

(b) Has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing"; or

(c) Has completed and filed with the department form FS-111, "Deferred Disqualification Disqualification Consent Agreement".

(9) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members shall make restitution for the amount of an overpayment, pursuant to 921 KAR 3:060.

(10) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstatement the individual, if eligible; and

(b) Restore the benefits that were lost as a result of the disqualification.

Section 11. Appeal Rights of the Household—(1) Further administrative appeal procedures shall not occur after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed, or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent administrative fair hearing decision.

(3) The household member who is subject to subsection (2) of this section shall be entitled to seek relief in a court having appropriate jurisdiction pursuant to KRS 138.140.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Incorporation by Reference—(1) The following materials are incorporated by reference:

(a) "FS-80, Notice of Suspended Intentional Food Stamp Program Violation, Edition 8/01", Cabinet for Health and Family Services; and

(b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, Edition 8/01", Cabinet for Health and Family Services; and

(c) "FS-111, Deferred Disqualification Disqualification Consent Agreement, Edition 8/01", Cabinet for Health and Family Services.

(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.

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Deputy Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 8 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health and Family Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2006, 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 May 31, 2006. 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: David Gayle
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional violation of a Food Stamp Program regulation has occurred and the penalty to be applied for an Intentional Program Violation (IPV).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B, by establishing a hearing process for individuals suspected of intentionally violating a Food Stamp Program regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS Chapter 13B, 194A.050(1), 194A.010(2), 7 C.F.R. 271.4, and 273.16 by establishing the hearing process and penalties associated with intentional violations of the Food Stamp Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by developing a hearing process in compliance with KRS Chapter 13B and 7 C.F.R. 273.16 and by establishing penalties in accordance with KRS 13B.050.

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

(a) The amendment will change this existing administrative
regulation: This amendment will change this administrative regulation by describing the hearing process in terms of a recommended order and final order, in accordance with KRS Chapter 13B. The amendment will also remove references to the Office of the Attorney General as they are no longer involved in the penalty process for IPV claims.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the administrative regulation to implement the new hearing and claim investigation process to be used by the Cabinet, and to comply with the requirements of KRS Chapter 13B and the provisions of 7 C.F.R. 273.16.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will administer the requirements established in 7 C.F.R. 273.16 for providing a hearing for individuals suspected of intentionally violating the rules of the Food Stamp Program and associated penalties for these violations. Additionally, the new hearing process will now comply with KRS Chapter 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment describes the process for conducting an administrative disqualification hearing for the Food Stamp Program in accordance with KRS Chapter 13B. Additionally, the amendment establishes the penalties for an IPV claim pursuant to 7 C.F.R. 273.16.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Food Stamp Program workers and hearing officers, in addition to all Food Stamp Program applicants and recipients in the Commonwealth, have the potential to be affected by this administrative regulation. Currently, there are approximately 595,000 individuals, or 260,000 households, participating in the Food Stamp Program in Kentucky, and each month approximately 15 Food Stamp Program disqualification hearings are conducted. There will be no impact on businesses, organizations, or state and local governments.

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

This amendment will provide food stamp participants and workers the opportunity to file exceptions to a hearing recommendation before the final order is entered. This is a recourse that was not available under the previous hearing process for the Food Stamp Program.

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

(a) Initially: No additional funding required.

(b) On a continuing basis: No additional funding required.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be State General Funds and Food Stamp Federal Funds. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied, as the administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 7 C.F.R. 273.16

2. State compliance standards: None

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter require-
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

922 KAR 2:160. Child Care Assistance Program.


STATUTORY AUTHORITY: KRS 194A 050(1), 199 892, 199 894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, and to qualify for the receipt of federal funds and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199 892 enables the Cabinet for Health and Family Services to qualify to receive federal funds under provisions of the federal Social Security Act to provide for effective regulation of child care centers. KRS 199 894 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. [EO-2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.] This administrative regulation enables the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Cabinet" is defined in KRS 199 894.
(3) "Child care" means the provision of care for a child, in the care of a day, on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision. ["Authorization" means eligibility for child care assistance services determined by the Division of Protection and Permanency of the Division of Family Support.]
(2) "Certificate" means a third-party payment mechanism provided by the cabinet or designed and used by a family to secure child care from a licensed, certified, or registered provider of choice.
(3) "Certified family child care home" means a "family child care home" as defined in KRS 199 894(6), described in KRS 400 898(2), and certified in accordance with 922 KAR 2:160.
(4) "Child care and development fund" or "CCDF" is defined in 45 C.F.R. 98.2 means the principal-source of federal funding for substate child care services and initiatives that improve the quality of child care.
(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the technical eligibility requirements of Section 2 of this administrative regulation with the financial resources to find and afford quality child care.
(6) "Child care certificate" is defined in 45 C.F.R. 98.2.
(7) "Child protective services" is defined in 922 KAR 1:300, Section 1(3) [44].
(7) "Day care" means the provision of child care for a portion of a day, on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.
(8) "Child with a special need" means a child who has multiple or severe problems that require ongoing specialized care.
(9) "East region" means Bath, Ballard, Boyd, Bracken, Breathitt,
directly from one's own trade or business for a minimum of twenty (20) hours per week and excludes employment in an individual's residence in which:

(a) The individual does not leave the residence; and
(b) Customers do not enter the residence.

(22) "Special needs child" means a child who has a condition that requires ongoing specialized care as defined by 20 U.S.C. 1401.

(23) "Teenage parent" means a parent [person] who is:
(a) Nineteen (19) years of age or younger; or
(b) Attending high school or pursuing a GED.

(28) "Toddler" means a child between the age of twelve (12) and twenty-four (24) months.

(57) "Urban" is defined as a county listed in KRS 61.010(1) through (3) as having a first, second, or third class city.


Section 2. Technical Eligibility. (1) A child shall be eligible for a service, if the child:

(a) Is:
   1. A resident of Kentucky and;
   2. A U.S. citizen or qualified alien;
(b) Is under age:
   1. Thirteen (13); or
   2. Nineteen (19) and is:
      a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:
         (i) Physician;
         (ii) Licensed or certified psychologist;
         (iii) Qualified mental health professional as defined in KRS 202A.011(12);
      (iv) Agency collateral approved by the cabinet, including a school or comprehensive care center; or
      (v) Cabinet employee or designee through a child protective services or preventive services authorization; or
      (vi) Comprehensive family services coordinator through a preventive services authorization;
(b) Under court supervision; or
(c) Identified as a priority by federal statute, regulation, or funding source; and
(d) Resides with a family whose income does not exceed:
   a. 150 percent of the federal poverty level at the time of initial application; or
   b. 165 percent of the federal poverty level at the time of redetermination; or
   2. Resides with a parent who:
      a. Receives, or needs to receive, child protective services, except:
         (i) A child who participates in the CCAP as a result of a child protective services authorization shall be eligible without regard to the family's income; and
         (ii) The child care copay required by Section 3(1)(b) of this administrative regulation may be waived on a case-by-case basis;
      b. Receives or needs to receive preventive services, except:
         (i) A child who participates in the CCAP as a result of a preventive services authorization shall be eligible without regard to the family's income;
         (ii) The child care copay shall be assessed in accordance with Section 3(1)(b) of this administrative regulation, unless waived on a case-by-case basis; and
   (iii) A child shall not be eligible for more than one (1) year without authorization;
   c. Is participating in the Kentucky Works Program described in 921 KAR 2:370;
   d. Has had K-TAP benefits discontinued due to employment, and the family's income does not exceed 155 percent of the federal poverty level, excluding TANF reimbursement payments; and
   e. Is employed for a minimum of twenty (20) hours per week;
   f. Is enrolled in an educational or training program consistent with an employment goal, and:
      (i) Is employed for a minimum of twenty (20) hours per week; or
      (ii) Meets the requirements of subsection (3) of this section; or
   g. Is a teenage parent; or
   3. Is placed with a relative caretaker pursuant to the conditions of KRS 605.120(5) for Kinship Care and the caretaker's gross monthly income shall not exceed:
      a. 150 percent of the federal poverty level at the time of initial application; and
      b. 165 percent of the federal poverty level at the time of redetermination.

(2) A child who resides in a two (2) parent household shall be eligible for participation in the CCAP if the family meets the requirements of subsection (1)(a), (b), and (c)(1) of this section and:

(a) Both parents meet the requirements of subsections (1)(c)2 or (3) of this section;
(b) One (1) parent meets one (1) or more of the requirements of subsections (1)(c)2 through (g) or (3) of this section and the other parent:
   1. Is physically or mentally unable to provide adequate care or supervision as demonstrated by written proof from a qualified professional attesting to the parent's inability; or
   2. Meets the requirements of subsection (1)(c)2a or b of this section.

(3) A child who resides with a parent shall be eligible if the parent participates:

(a) As an unpaid student in a minimum of twenty (20) hours per week of:
   1. Student teaching;
   2. Internship, or
   3. Practicum; or
(b) In combination of paid employment and unpaid student capacity described in paragraph (a) of this subsection equal to twenty (20) hours per week.

(4) To the extent that state and federal funds are available, financial eligibility for participation in the CCAP may be increased beyond 150 percent of the federal poverty level for initial application and 165 percent of the federal poverty level for redetermination.

(5) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;
(b) A legal guardian;
(c) A member of the K-TAP or food stamp assistance case in which the child in need of services is included;
(d) A person living in the same home as the child in need of care;
(e) A provider not:
   1. Licensed according to 922 KAR 2:090, Child care center license;
   2. Certified according to 922 KAR 2:100, Certification of family child care homes; or
   3. Registered according to 922 KAR 2:180, Requirements for unregulated provider registration in the Child Care Assistance Program;
   (f) An alternative program such as Head Start, state preschool or state kindergarten; or
   (g) Another child care provider if the family operates a child care business in the home.

(6) If the family's income remains less than 165% of the federal poverty level, the family who has transitioned from K-TAP may continue participation in the program.

(7) Prior to the determination of technical eligibility, a parent of the child shall sign the DCC-90, "Application for Subsidized Child Day Care Assistance."

(8) If the restrictions specified in subsection (5) of this section do not apply to the related provider, the related provider may be eligible for payment from the Child Care Assistance Program.

Section 3. Parental Rights and Responsibilities. (1) The family of a child served by the CCAP shall:

(a) Have rights pursuant to KRS 198.898(1) and (2); and
(b) Be responsible for a copy in accordance with the family fee scale in Section 45(5)(d) of this administrative regulation, if the child care copay has not been waived under a child protective services authorization or preventive services authorization.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's day care expenses, that payment shall be in lieu of the parental copayment required by Section 45(5)(d) of this administrative regulation.

(3) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, a parent of a child who receives or has been approved to receive CCAP benefits shall be offered a:

(a) Child care service subject to the availability of state and federal funds; and

(b) Choice:

1. Pursuant to the option offered in 45 C.F.R. 98.30(a)(1); or
2. To receive a child care certificate, DCC-94, Child Care Service Agreement and Certificate [DCC-76, Child Day-Care Service Agreement and Child Care Certificate], that shall be:
   a. Issued to the parent; and
   b. Of value commensurate with the subsidy value of a child care service provided in subparagraph 1 of this paragraph.

(c) To receive a child care service provided by a licensed, certified, or registered provider, or agency, and

(d) Not be considered a contract or grant to the child care provider, but shall be considered assistance to the parent pursuant to 45 C.F.R. 98.30(c)(6).

(5) Unless an exception is authorized by the cabinet or its designee, a parent may change his provider a maximum of three (3) times in a twelve (12) month period.

(5a) Unless there is an exception pursuant to KRS 214.036, a parent shall present to the cabinet or its designee a current immunization certificate showing that the child is immunized in order to receive child care services under the CCAP.

(4) The DCC-94 [DCC-76, Child Day-Care Service Agreement and Child Care Certificate] shall:

(a) Be used for a child care service provided by a licensed, certified, or registered provider, or agency, and

(b) Not be considered a contract or grant to the child care provider, but shall be considered assistance to the parent pursuant to 45 C.F.R. 98.30(c)(6).

(c) The range of provider options pursuant to 45 C.F.R. 98.30;

(d) Parental rights pursuant to KRS 199.899(2);

(e) The K-TAP exception in which K-TAP benefits may not be reduced in extreme circumstances to 921 KAR 2:370 for a single custodial parent who refuses to work if the parent demonstrates an inability to obtain child care services for a child under age six (6), and

(f) For termination of the DCC-94 [DCC-76], pursuant to KRS 199.899(6)(b).

(2) The cabinet shall ensure that a provider of a child care service funded under the CCFD and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;
(b) 922 KAR 2:100, Certification of family child care homes;
(c) 922 KAR 2:110, Child care facility provider requirements;
(d) 922 KAR 2:120, Child care facility health and safety standards; and

(e) 922 KAR 2:180, Requirements for unregulated provider registration in the Child Care Assistance Program.

(3) The cabinet has established the maximum child day care payment as follows:

(a) The following charts represent the local maximum payment rate on a per-day basis. The local maximum payment rate charts include the following categories:

1. Full day;
2. Part day;
3. Urban;
4. Nonurban;
5. Licensed;
6. Certified;
7. Registered;
8. Infant/Toddler;
9. Preschool;
10. School-age.

(b) The following child care maximum payment rates shall be effective on July 1, 2006. (Chart abbreviations are as follows: FQ—full-time, five (5) or more hours; FD—part-day, less than five (5) hours. Urban counties include: Boone, Bourbon, Boyd, Bullitt, Campbell, Carter, Christian, Clark, Daviess, Fayette, Gallatin, Grant, Greenup, Henderson, Jefferson, Jessamine, Kenton, Madison, Oldham, Pendleton, Scott, and Woodford.)

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**East Region**


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<tr>
<td>Infant/Toddler</td>
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<td>Preschool</td>
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<td>School-Age</td>
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</table>

| **Certified**         |
| **FD**                |
| **Urban** | **Nonurban** | **Urban** | **Nonurban** |
| Infant/Toddler | 17 | 16 | 14 | 13 |
| Preschool | 15 | 15 | 12 | 12 |
| School-Age | 15 | 15 | 12 | 12 |

| **Registered**        |
| **FD**                |
| **Urban** | **Nonurban** | **Urban** | **Nonurban** |
| Infant/Toddler | 10 | 10 | 6 | 6 |
| Preschool | 10 | 10 | 6 | 6 |
| School-Age | 10 | 10 | 6 | 6 |

**West Region**


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<tr>
<td>Preschool</td>
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<td>School-Age</td>
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</table>

| **Certified**         |
| **FD**                |
| **Urban** | **Nonurban** | **Urban** | **Nonurban** |
| Infant/Toddler | 16 | 15 | 13 | 12 |
| Preschool | 15 | 15 | 12 | 12 |
| School-Age | 15 | 15 | 12 | 12 |

| **Registered**        |
| **FD**                |
| **Urban** | **Nonurban** | **Urban** | **Nonurban** |
| Infant/Toddler | 10 | 10 | 6 | 6 |
| Preschool | 10 | 10 | 6 | 6 |
| School-Age | 10 | 10 | 6 | 6 |

**Central Region**

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford.

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<th>Maximum Payment Rates</th>
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<td><strong>Urban</strong></td>
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<tr>
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<td>Preschool</td>
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<td>School-Age</td>
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## VOLUME 32, NUMBER 11 – MAY 1, 2006

### Table

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(4) [l] If the same amount is charged to the general public:
(5) [g] A licensed or certified provider may receive, to the extent funds are available:
1. [g] Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
   a. [g] National Association for the Education for Young Children;
   b. [g] National Early Childhood Program Accreditation;
   c. [g] National Association for Family Child Care;
   d. [g] National School Aged Child Care Alliance; or
   e. [g] Other accrediting body approved by the Early Childhood Development Authority or the cabinet,
2. [g] One (1) dollar per day beyond the maximum rate for nontraditional hour care for each child receiving services between:
   a. [g] 6 p.m. to 6 a.m.; or
   b. [g] Friday, 6 p.m. through Monday, 6 a.m.; and
(6) [g] A licensed, certified, or registered provider may receive, to the extent funds are available, a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:
1. [g] With a special need; or
2. [g] Who is between age thirteen (13) and nineteen (13) and is:
   a. [g] Physically or mentally incapable of caring for himself; or
   b. [g] Under court supervision.
(6a) [g] The cabinet or its designee shall determine a copay that the family shall pay to the provider for the cost of child day care, based on the following sliding scale:

### Family Fee Scale

(Family Co-Pay Per Day)

(Effective July 1, 2003)

<table>
<thead>
<tr>
<th>Income Range Monthly</th>
<th>Family Size 2 Family Co-Pay With 1 Child</th>
<th>Family Size 3 Family Co-Pay With 1 Child</th>
<th>Family Size 4 Family Co-Pay With 1 Child</th>
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The family fee scale shall be effective the first of the month following the adoption of this administrative regulation, as amended.

The cabinet or its designee shall determine the maximum daily reimbursement rate and parent copay, not to exceed rates specified in subsections (3) through (5) and (4) of this section.

Unless a family's child care copay has been waived, the cabinet or its designee shall include the income of each adult family member in the household when calculating a family's gross monthly income with the following exceptions:

(a) A child's:
1. Wages; or
2. Other income;
(b) Food stamps;
(c) A one (1) time lump payment;
(d) Supplemental Security Income or Social Security received in the child's name;
(e) Daily per diem received as a foster parent;
(f) A court award;
(g) A monetary gift;
(h) Military education benefits;
(i) K-TAP benefits received on behalf of the child only; and
(j) An employer only contribution listed on a pay check stub.

Continued eligibility under the CCAP shall be reetermined:

(a) Every twelve (12) months; or
(b) Upon receipt of a reported change.

The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective services or preventive [preventative] services authorization;
(b) A child with a special need;
(c) A teen parent;
(d) A K-TAP recipient attempting through employment to transition off assistance;
(e) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
(f) A low income working parent; and
(g) A parent in education or training.

If CCAP services are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to each family receiving services.

If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to licensed, certified, or registered[, and] providers.

A licensed or certified provider that serves a child participants in the CCAP shall:

(a) Report more than five (5) absences per month to the cabinet or its designee; and
(b) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the arrival and departure time of each child has been recorded.

Payment under the CCAP to a registered provider shall be based on the number of days reported on the DCC-77, Child Care Billing Statement(s) Enrollment/Attendance Verification, that child care services are provided.

Upon the effective date of this administrative regulation, a child care center that receives subsidized child care payments, in accordance with this administrative regulation, for forty (40) or more full-time or part-time children shall:

(a) Have two (2) years to meet the requirements of a Stars for KIDS NOW center as specified in 922 KAR 2:170, and
(b) Despite any fluctuation in the number of subsidized children eligible for payments receiving care in the child care center, maintain a Stars for KIDS NOW center rating as specified in 922 KAR 2:170.

Section 5. Recoupment. (1) The cabinet shall recoup a CCAP overpayment in each of the following cases:
(a) Fraud pursuant to 45 C.F.R. 98.800 [involving a current recipient] in which overpayment equals or exceeds the cost of recovery;
(b) Overpayment on behalf of a parent to a child care provider due to provider error or fraud.
(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.
(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.
(e) If a family's child care assistance benefit is reduced or terminated, the cabinet or its designee shall provide the family with a minimum of ten (10) days notice of the change in benefits.
(f) The cabinet shall recover the amount of an improper payment pursuant to KHS 45.237-241, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 6. Criteria for Suspension or Termination of Services Under the CCAP. (1) If a family does not comply with a required copay:
(a) The cabinet or its designee shall develop a payment plan with the family;
(b) The family shall not transfer to another provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee; and
(c) CCAP benefits may be suspended during the period in which back payment is owed to the provider.

(2) The cabinet or its designee shall investigate each allegation of fraud or overpayment and establish a repayment agreement with a family for the purpose of recovering a CCAP overpayment.

(3) Benefits under the CCAP shall be:
(a) Suspended if a family defaults on up to two (2) payments under a repayment agreement, suspension to end upon compliance with the repayment agreement; or
(b) Terminated if a family:
1. Resides out of state;
2. No longer meets the age, income, or parental status requirements established in Section 2(1), (2) or (3) of this administrative regulation;
3. Fails to comply with the redetermination requirement established in Section 4(9)(b) of this administrative regulation;
4. Fails to provide verification of income if a copay has not been waived;
5. Defaults on three (3) payments under a repayment agreement with the cabinet; or
6. Refuses to sign a DCC-78, Repayment Agreement.

(4) If a family reappeals for CCAP benefits after termination from the program for noncompliance with a repayment agreement, as described in subsection (3)(b) of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the three (3) overdue installments.

(5) If a family reappeals for CCAP benefits after termination from the program for refusal to sign a DCC-78 [repayment agreement], as described in subsection (3)(b)(6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-78, [Repayment Agreement] and payment of two (2) installments.

Section 7. Criteria for Nonpayment under the CCAP. (1) Payment under the CCAP shall:
(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to:
1. Request payment from the cabinet or its designee prior to submitting the DCC-77; and
2. Provide explanation for a child having more than five (5) absences;
   (b) Not be made to a certified provider for more than five (5) absences per child during a month;
   (c) Be denied in accordance with KRS 199.6894(6);
   (d) Cease permanently if a provider:
      1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or
      2. Refuses to sign a DCC-78[-Repayment Agreement].
   (e) Not be made after the date in which a family begins using a different provider; or
   (f) Not be made if a family no longer meets the technical eligibility requirements under the CCAP.

Section 8. Appeals. The cabinet or its designee shall inform a family that:
1. A denial of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) days of the date of the negative action; and
2. If a family appeals:
   (a) A reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or
   (b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

Section 9 Incorporation. (Incorporated) By Reference. (1) The following material is incorporated by reference:
(a) "DCC-34, Child Care Service Agreement and Certificate," edition 06-04-02 DCC-76 Child Care Service Agreement and Child Care Certificate, edition 06-04-06;
(b) "DCC-76, Child Care Billing Statement, Enrollment/Attendance Verification," edition 10-04-01;
(c) "DCC-38, [DCC-78] Repayment Agreement," edition 09-06 [07-03]; and
(d) "DCC-39, Application for Subsidized Child Day Care Assistance," edition 09-06 [06-06].

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

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRWOODSTELL, Secretary
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, 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 May 15, 2006, 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 May 31, 2006. 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.
regulation: This administrative regulation will affect a total of 8,976 children. Nearly 5,457 children will be affected due to the increase in child care assistance rates to the full time licensed and certified child care providers. 14 counties will be re-classified from nonurban to urban, based on the utilization of the Classification of Cities model provided in KRS 81.010. The total number of urban counties will increase from 22 to 28 under the re-classification. 420 licensed and certified providers will receive the new urban rate, as a result of the reclassification of the county. The total number of children to benefit from the reclassification of these counties is 4,467. 8 counties will be recategorized from urban and nonurban. 225 licensed and certified providers are located in counties recategorized from urban to nonurban. The total number of children to be affected by the reclassification of these 8 counties is 1,509.

The provision to require centers that care for 40 or more subsidized children will mean that an additional 9,287 children or 21% more children will be in a center that meets the requirements of the Stars for KIDS NOW program. At the end of the 2 year compliance period, 28% of all subsidized children will be in a Stars for KIDS NOW program. This provision was recommended and is supported by the KIDS NOW Authority. The amendment to this administrative regulation will better ensure the safety, consistency, and quality of child care services provided to children receiving child care assistance across 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: 77% of providers will receive an increase in payments through the Cabinet's reclassification of urban and nonurban counties as provided in the Classification of Cities in KRS 81.010. Increased payments will be per child per day and will not be more than $1.00. 8 counties will receive a decrease, because they will be reclassified as nonurban from urban counties. The providers in the 8 counties will be encouraged to become eligible for quality incentive payments or to increase quarterly quality incentive payments that will offset any decrease in child care assistance rates to those providers and maintain quality services for those 8 counties.

The requirement for centers to become a Stars for KIDS NOW center will affect 137 providers. The affected providers will receive technical assistance over the next 2 years to ensure they will be successful in achieving a Stars for KIDS NOW rating.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: The amendment to this administrative regulation has an estimated continuing, annual cost of $3,261,280. The estimated annual cost of the Child Care Assistance Program, including the proposed amendment, is $150.5 million.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Child Care Development Funds, Temporary Assistance for Needy Families, General Fund Dollars, Tobacco Dollars, and Restricted 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 will be no increase in fees or funding created by the amendment to this administrative regulation.

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

(9) TIERING: Is tiering applied? The Child Assistance Program will be implemented statewide; however, tiering is applied to distinguish urban from nonurban counties. Child Care providers in urban counties receive a higher rate of child care assistance, due to the fact that those providers experience higher overhead costs. These rate differentiations are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619,
KENTUCKY STATE BOARD OF ELECTIONS
(Anne Administrative Regulation)

31 KAR 4:170. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.235
STATUTORY AUTHORITY: KRS 117.235(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions. (1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

(2) "Electioneering" is defined by KRS 117.235(3).

(3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.

Section 2. Electioneering shall not include a bumper sticker affixed to a person’s vehicle while parked within or passing through a distance of 300 feet of any polling place on the day of any election for a reasonable amount of time in which to vote.

TREY GRAYSON, Chair
APPROVED BY AGENCY: April 5, 2006
FILED WITH LRC: April 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2006, at 10 a.m. local time at the State Board of elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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 May 31, 2006. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kathryn H. Dunngan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

CONTACT PERSON: Kathryn H. Dunngan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunngan

(1) Provide a brief narrative summary of:
(a) What this administrative regulation does: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish exceptions to the prohibition on electioneering contained in KRS 117.235(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes exceptions to the prohibition on electioneering.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation informs all election officials, eligible voters, law enforcement officials, and the general public of the exceptions to the prohibition on electioneering.

(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:
(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters, registered voters, actual voters, all election officials and boards, all law enforcement officials, and the general public will be affected by this administrative regulation.

(4) An assessment of how the above group or groups will be impacted either by the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The groups will know the exceptions to the prohibition on electioneering within 300 feet of the polling place on election day.

(5) Estimate how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs associated with this regulation.

(b) On a continuing basis: There will be no costs associated with this regulation.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The will be no source of funding necessary for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not applied, because this administrative regulation applies equally to all citizens.

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: All election officials, boards of election, precinct election officer, and local law enforcement.

(3) State the aspect or service of local government to which this administrative regulation relates: The conduct and regulation of elections and the ability to electioneer by the general public.

(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:
(a) Revenues: None
(b) Expenditures: None
(c) Other Explanation: None
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:310. Domestic production activity deduction.

RELATES TO: KRS 141.010(13)
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.010(13) requires that net income, in the case of corporations, means gross income as defined in KRS 141.010(12) minus the deduction allowed by KRS 141.0202 and minus the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the certain deductions listed in KRS 141.010(13). Net income in the case of taxpayers other than corporations is defined in KRS 141.010(11). This administrative regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.

Section 1. Definitions. (1) "Apportionment factor" is defined in KRS 141.120(8)(c) and computed for the separate return filer or the EAG.

(2) "Corporations" means:
(a) For elective consolidated return filers, corporations as defined in KRS 141.200(2)(d); and
(b) For separate return filers or nexus consolidated return filers, corporations as defined in KRS 141.010(24).

(3) "DPAD" means domestic production activity deduction as defined in Internal Revenue Code 199.

(4) "DPGR" means domestic production gross receipts as defined in Internal Revenue Code 199.

(5) "EAG" means expanded affiliated group as defined in proposed regulation 1.199-7(a)(1), but shall not include corporations exempt from taxation pursuant to KRS 141.040(1).

(6) "Elective consolidated return filer" means those corporations as defined in Section 7701(a)(3) of the Internal Revenue Code filing in accordance with KRS 141.200(3) and (4).

(7) "General Partnership" is defined in KRS 141.206(1)(a).

(8) "Internal Revenue Code" is defined in KRS 141.010(3).

(9) "Nexus consolidated return filer" means those corporations, as defined under KRS 141.010(24), filing in accordance with KRS 141.200(6), (9), (10), and (11).

(10) "QPAI" means qualified production activities income as defined in proposed regulation 1.199-1(c).

(11) "Separate return filer" means those corporations filing in accordance with KRS 141.200(10).

Section 2. Adoption of Internal Revenue Service Proposed Regulation 1.199. Proposed regulation 1.199 shall be adopted for the computation of the DPAD, except for the amendments and exceptions listed in Section 3 of this administrative regulation.

Section 3. Amendments and Exceptions. In computing the DPAD attributable to Kentucky, the following amendments and changes are made to proposed regulation 1.199:

(1) For proposed regulation 1.199-1(b), the definition of taxable income for corporations is defined by KRS 141.010(14) adjusted by KRS 141.011.

(2) Proposed regulation 1.199-2 is amended to add the following: W-2 wages are computed pursuant to KRS 141.120(6)(b) and 103 KAR 16:090.

(3) For proposed regulation 1.199-4(b), the depreciation expense that is deducted in cost of goods sold shall be computed pursuant to KRS 141.0101 and as modified by KRS 141.010(3).

(4) Proposed regulation 1.199-5(b) regarding S corporations is not applicable.

Section 4. Application of the DPAD. (1) For corporations, the DPAD shall be computed as follows:

(a) Multiply the QPAI by the apportionment factor of the separate entity filer or EAG.

(b) Multiply the applicable percentage in Internal Revenue Code 199 by the lesser of the amount computed in Section 4(1)(a) of this administrative regulation or the taxable income of the separate return filer or taxable income of the EAG as computed in Section 3(1) of this administrative regulation.

(c) The DPAD shall be limited by the amount of Kentucky W-2 wages as computed in Section 3(2) of this administrative regulation.

(d) Allocate pursuant to the provisions of proposed regulation 1.199-7, if the DPAD is based upon EAG.

(e) Take the DPAD after the net operating loss deduction in computing taxable income.

(2) For taxpayers other than corporations:

(a) Full-year residents shall be allowed the federal deduction for W-2 wages.

(b) Part-year or full-year nonresidents shall prorate the allowable federal deduction based upon the percentage of Kentucky DPGR to federal domestic production gross receipts, with a further limitation that the DPAD cannot exceed fifty (50) percent of Kentucky W-2 wages.

(c) The DPAD shall be taken when computing Kentucky adjusted gross income.

Section 5. General Partnerships The distributive share of DPAD items shall be passed through to the individual partner.

Section 6. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on May 24, 2006 at 1 p.m. in Room 388 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Staff, Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 141.010(13) requires that net income in the case of corporations, means gross income as defined in KRS 141.010(12) minus the deduction allowed by KRS 141.0202 and minus the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the certain deductions listed in KRS 141.010(13). Net income in the case of taxpayers other than corporations is defined in KRS 141.010(11). This regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by HB 272 2005 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A; this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Any taxpayer that takes the domestic production activity deduction.

(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 administrative regulation provides guidance as to how the DPAD is calculated.

(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: Agency funds

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

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

(9) TIERING: Is tiering applied? Tiering was used to the extent that the administrative regulation recognizes differences between consolidated and separate filers.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 141.010(13), 141.050.
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: Internal Revenue Code 1341 provides for an adjustment pursuant to the claim of right doctrine. KRS 141.010 determines a corporation’s Kentucky net income. This administrative regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.

Section 1. Definition. "Internal Revenue Code" is defined in KRS 141.010(3).

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return, as follows:
(1) If the year the income or deduction was originally reported or deducted is still open under the statute of limitations, the claim of right shall be made by amending that same year’s corporation income tax return.
(2) If the year the income or deduction was originally reported or deducted is closed, as the statute of limitations has expired, the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes, subject to the following limitations:
   (a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141.
(b) For example, if a corporation reported claim of right income of $1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of $12,000, then the adjustment for the claim of right cannot exceed a $12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation’s business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle also applies in cases where the tax rates differ between the applicable years and when no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.

Section 2. Documentation. The burden shall be on the corporation to show that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax which was paid on such income. Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable to Kentucky.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed new administrative regulation shall be held May 24, 2006, at 1 p.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robson
(1) Provide a brief summary of:
(a) What this administrative regulation does: Internal Revenue Code 1341 provides for an adjustment pursuant to the claim of right doctrine. KRS 141.010 determines a corporation’s Kentucky net income. This regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance on the interaction between the Internal Revenue Code and the Kentucky Revised Statutes with regards to the claim of right issue.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance on the interaction between the Internal Revenue Code and the Kentucky Revised Statutes with regards to the claim of right issue.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. N/A, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect any corporation income taxpayer who makes a claim of right adjustment on its federal income tax returns which also files Kentucky corporation income tax returns.
(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. They will have instruction on how to apply the claim of right doctrine to Kentucky income tax.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation relates to statutes that are generally applicable to all Kentucky corporation income tax payers.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)


RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(9)(a)(1) states that if the allocation and apportionment provisions do not fairly represent the extent of the corporation’s business activity in Kentucky, a corporation may petition for, or the Department of Revenue may require, in respect to all or any part of the corporation’s business activity, if reasonable, separate accounting. This regulation explains when separate accounting shall apply.

Section 1. General. A corporation may apply for an alternative apportionment method using separate accounting, or the Department of Revenue may require separate accounting, if the corporation or Department of Revenue can establish either:
(1) That the business income subject to apportionment, or
(2) One (1) or more of the factors does not fairly represent the activity of the corporation’s business activities in Kentucky. The fact that taxable income is greater or lesser, or that the corporation’s accounting records reflect income by contracts or by states is not sufficient to support a request for separate accounting.

Section 2. Separate Accounting. If a corporation is permitted or required to use separate accounting, the authorization or requirement shall be applied prospectively from the date or taxable year it was directed in writing by the Department of Revenue or requested by the corporation. Income tax returns filed under such conditions are subject to audit and review on a separate accounting basis to determine the correctness of income and expenses, but the method of apportioning net income shall not be changed retroactively.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 8, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on May 24, 2006 at 1 p.m. in Room 308 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 155-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(9)(a)(1) states that if the allocation and apportionment provisions do not fairly represent the extent of the corporation’s business activity in Kentucky, a corporation may petition for, or the Department of Revenue may require, in respect to all or any part of the corporation’s business activity, if reasonable, separate accounting. This regulation explains when separate accounting shall apply.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by the HB 272 2005 GA.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will help taxpayers determine when separate accounting is appropriate.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any interstate business which has Kentucky income not fairly represented by the normal apportionment calculations.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation will help taxpayers determine when separate accounting is appropriate.
(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: Agency funds.

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

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

(9) TIERING. Is tiering applied? Tiering was not used, because this administrative regulation relates to statutes that are generally applicable to Interstate businesses.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:340. Apportionment and allocation; completed contract method.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. This administrative regulation explains how the business income apportionment factors shall be calculated when net income is reported on a completed contract basis.

Section 1. Definitions. (1) "Completed contract method of accounting" means a method of accounting whereby business income from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted.

(2) "Long-term contracts" means contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

Section 2. General. If a corporation uses the completed contract method of accounting, the business income earned within Kentucky shall be determined by a weighted formula, the numerator of which is the weighted sales factor fifty (50) percent, plus the weighted property factor twenty-five (25) percent plus the weighted payroll factor twenty-five (25) percent, and the denominator of which is four (4), as modified by the following special rules for business income derived from long term contracts.

Section 3. Sales Factor. The numerator and denominator of the sales factor shall be determined pursuant to KRS 141.120(9)(c) and the following special rules:

(1) Gross receipts derived from the performance of a contract shall be attributable to Kentucky if the construction project is located in Kentucky. If the construction project is located partly within and partly without Kentucky, the gross receipts attributable to Kentucky from the contract in progress shall be based upon the ratio which construction costs for the project in Kentucky incurred during the taxable year bear to the total of construction costs for the entire project during the taxable year.

(2) The sales factor shall include the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Section 4. Property Factor. The numerator and denominator of the property factor shall be determined pursuant to KRS 141.120(8)(a) and the following special rules:

(1) The average value of the corporation's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billing (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts), shall be included in the denominator of the property factor. The value of any construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

(2) Rent paid for the use of equipment directly attributable to a particular construction project shall be included in the property factor at eight (8) times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

Section 5. Payroll Factor. The numerator and denominator of the payroll factor shall be determined pursuant to KRS 141.120(8)(b) and the following special rules:

(1) Compensation paid employees which is attributable to a particular construction project shall be included in the payroll factor even though capitalized into the cost of construction.

(2) Compensation paid employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributable to the state in which the services are performed.

Section 6. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each contract completed during the taxable year, regardless of whether the project is located within or without Kentucky, to determine the amount of income which is attributable to sources within Kentucky. The amount of income from each contract completed during the taxable year apportioned to this state, plus other business income apportioned to this state by the regular three (3) factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to Kentucky shall be the measure of tax for the taxable year. The amount of income (or loss) from each contract which is derived from sources within Kentucky using the completed contract method of accounting shall be computed as follows:

(a) In the taxable year in which the contract is completed, the income (or loss) thereof is determined.

(b) The income (or loss) determined at (a) above shall be apportioned to Kentucky by the following method:

(1) A fraction is determined for each year during which the contract was in progress. The numerator shall be the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator shall be the total of all construction costs for the project.

(2) Each percentage determined in (a) shall be multiplied by the apportionment formula percentage for that particular year as determined in Section 2 of this administrative regulation.

(c) The percentages determined at (b) for each year during which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at subsection 6(1) shall be multiplied by the total percentage. The resulting income (or loss) is the amount of business income from the contract derived from sources within Kentucky.

Section 7. Computation for Year of Withdrawal, Dissolution or Cessation of Business. (1) Use of the completed contract method of accounting requires that income derived from sources within Kentucky from the project in progress outside Kentucky on the date of withdrawal, dissolution or cessation of business in Kentucky be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(2) The amount of income (or loss) from each contract to be apportioned to Kentucky by the apportionment method set forth in Section 6(2) of this administrative regulation shall be determined as follows:

(a) The amount of business income (or loss) for each contract shall be the amount by which the gross contract price from each contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during the period in connection with each contract.

(b) In so doing, account shall be taken of the material and sup-
plies on hand at the beginning and end of the taxable year for use in each contract.

R.B. RUDELPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006

FILED WITH LRC: April 6, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on May 24, 2006 at 1 p.m. in Room 368 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3984.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation explains how the business income apportionment factors shall be calculated when net income is reported on a completed contract basis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with changes caused by HB 272 2005 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate any regulation necessary to the administration of the taxing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will guide taxpayers in using the completed contract method.

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

(a) How the amendment will change this existing administrative regulation: N/A. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any interstate business which uses the completed contract method of reporting net income.

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

(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: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: N/A

FINANCE AND ADMINISTRATION CABINET

Department of Revenue
Division of Income Taxation
(New Administrative Regulation)

103 KAR 17:100. Division of Income between married individuals filing separate tax returns.

RELATES TO: KRS 141.020; 141.080; 141.300; 141.305
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides guidelines for determining how income derived from joint ownership of property and self-employment is divided among married individuals filing separate tax returns.

Section 1. Income derived from the joint ownership of real property, tangible personal property, and intangible property shall be divided equally by married individuals filing separate tax returns. Income derived from property not held jointly shall be attributable to its individual owner.

Section 2. Income derived from self-employment by a husband and wife filing separate tax returns.

(1) Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the percentage amount of each spouse's contribution of services and capital, unless self-employment taxes have been paid by each spouse separately, or a partnership agreement provides evidence of separate income.

(2) The following shall serve as an example.

Capital Contributions Services Contributions
Husband 30% + 75% = 105 / 2 = 52.5% 
Wife 70% + 25% = 95 / 2 = 47.5%

Section 3. If a joint declaration of estimated tax is made by a husband and wife, but a joint return is not made for the same taxable year, the joint estimated tax payments for the taxable year shall be divided in the same manner as provided under Internal Revenue Code Section 6015.

R.B. RUDELPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on May 24, 2006 at 10 a.m. in Room 368 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed
administrative regulation to the contact person noted below.

CONTACT PERSON: Angela Robinson, Staff Assistant, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines for determining how income derived from joint ownership of property, and self-employment is divided among married individuals filing separate tax returns.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to provide guidance on how to calculate income for married individuals filing separately.

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce any tax statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: Through instruction and mathematical example, this administrative regulation shows how married taxpayers, filing separately, should account for the income from joint property.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect married individuals who receive income from joint property, but file separately.

(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. They are being provided with guidance and calculation examples

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation is generally applicable to any married taxpayer who files separately, but has joint income.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Division of Waste Management (Repealer)


RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.45, 224.60, 40 C.F.R. Part 280 Subpart G, Part 281, 42 U.S.C. 6991c


NECESSITY, FUNCTION, AND CONFORMITY: 401 KAR 42:071 shall be repealed in order to address inconsistencies in the Underground Storage Tank Program. 401 KAR 42: 260, 401 KAR 42:270, 42:280, and 42:310 were combined into the new regulation 401 KAR 42:250. This was done in order to group regulations with related subject matter.

Section 1. The following regulations shall be repealed:
(1) 401 KAR 42:071, Voluntary closure for facilities that permanently closed a UST system or had a confirmed release prior to April 18, 1994;
(2) 401 KAR 42:260, Financial Responsibility Account;
(3) 401 KAR 42:270, Petroleum Storage Tank Account;
(4) 401 KAR 42:280, Claims Procedures; and
(5) 401 KAR 42:310, Contractor Costs.

JOHN W. CLAY, Deputy Secretary
For LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Meri Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: R. Bruce Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 401 KAR 42:071, 42:260, 42:270, 42:280, and 42:310 to alleviate inconsistencies in the UST Program and repeals 4 regulations which were combined into 401 KAR 42:250 due to related subject matter.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make improvements to the arrangement of UST Program regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by maintaining the existing requirements of 810 KAR Chapter 42.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists by establishing the various requirements of the UST 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: Does not apply.

(b) The necessity of the amendment to this administrative regulation: Does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: Does not apply.

(d) How the amendment will assist in the effective administration of the statutes: Does not apply.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation will repeal regulations that are either inconsistent or have been relocated within 810 KAR Chapter 42 of the UST Program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no costs associated with implementation of this administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the restricted fund receipts described in KRS 224.60-150 and 224.60-145.

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

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

(9) TIERING. Is tiering applied? No tiering is applied. To apply tiering to the administrative regulation would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect: This administrative regulation should not affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation: This administrative regulation relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of 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 (+/-): See below.
   Expenditures (+/-): See below.

   Other Explanation: The cabinet expects no significant impact from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)


RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEA).

Section 1. Applicability. This administrative regulation establishes the eligibility requirements and procedures for an eligible petroleum storage tank owner or operator to make application and receive reimbursement from the cabinet to pay the cost of corrective action due to a release from a petroleum storage tank. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTEA.

Section 2. Application for Assistance. (1) Within thirty (30) calendar days of a confirmed release, a petroleum storage tank owner or operator who has received a Certificate of Registration and Reimbursement Eligibility, pursuant to 401 KAR 42.020, or a Certificate of Eligibility, which indicates that the owner or operator is eligible to participate in the Financial Responsibility Account or the Petroleum Storage Tank Account, shall complete and submit to the cabinet an "Application for Assistance", DEP 6063 (January 2006) as incorporated in Section 26 of this administrative regulation.

(2) An owner or operator who has not submitted an Application for Assistance for a confirmed release prior to the effective date of this administrative regulation shall submit a completed "Application for Assistance", DEP 6063 (January 2006), incorporated by reference in this administrative regulation, in order to be eligible for reimbursement.

(3) The eligible petroleum storage tank owner or operator shall certify in the Application for Assistance that:
   (a) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet, and
   (b) A contract has been entered into and submitted in accordance with Section 3 of this administrative regulation.

(4) A written notice, in accordance with 401 KAR 42.070, shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.

(5) The cabinet may request additional information and documentation from the applicant, if necessary to approve the Application for Assistance. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application to be denied. A request for an extension of time in which to submit the requested documentation shall be submitted in writing to the cabinet prior to the deadline. Denial of the Application for Assistance shall not prevent the petroleum storage tank owner or operator from resubmitting the requested documentation becomes available.

(6) If the petroleum storage tank owner or operator meets the requirements of subsections (2) and (3) of this section, the cabinet shall:
   (a) Approve the Application for Assistance;
   (b) Evaluate the eligibility of the owner or operator to receive reimbursement from either the Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation, and
   (c) If the evaluation results in changing the owner's or operator's account placement from the initial placement made prior to the submittal of the Application for Assistance, the cabinet shall issue an amended "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006), incorporated by reference in 401 KAR 42.020.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible for reimbursement from the cabinet for:
   (a) The performance of release investigation, site check or site investigation, for a facility; and
   (b) The development and implementation of a corrective action agreement in accordance with Section 17 of this administrative regulation.
(2) The contract shall be obtained and submitted to the cabinet prior to commencing activity, except for those actions directed and documented by the cabinet's Environmental Response Team upon the cabinet's declaration of an environmental emergency.

(3) If a contract is changed or revised, a copy of that contract shall be submitted to the cabinet within thirty (30) days of execution.

Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall be eligible to receive reimbursement for corrective action costs and third-party claims, incurred on or after April 9, 1990, from the Financial Responsibility Account if the cabinet determines the petroleum storage tank owner or operator to have satisfied the following requirements:

(a) Registered the tanks with the cabinet in accordance with 401 KAR 42:020 prior to the release requiring corrective action;

(b) Maintained UST system release detection as required by 401 KAR 42:040. A petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42:070, shall have maintained compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(c) Maintained corrosion protection as required by 401 KAR 42:030;

(d) Maintained overfill and spill prevention as required by 401 KAR 42:030 for those tanks in operation after December 22, 1998;

(e) Received a "Certificate of Registration and Reimbursement Eligibility" from DEP 7113 (January 2006) for the facility, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to the effective date of this administrative regulation;

(f) Filed a notice of intent form, if applicable, with the cabinet to permanently close the petroleum storage tanks at the facility to make a change-in-service to comply with the requirements of 401 KAR 42:070;

(g) Reported the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400 and 401 KAR 42:050;

(h) Performed initial abatement procedures as required by the "UST System Release Response and Initial Abatement Requirements Outline" (January 2006), incorporated by reference in 401 KAR 42:060; and

(i) With regard to reimbursement for third-party claims, has complied with the requirements of 401 KAR 42:300.

(2) An owner or operator of a petroleum storage tank who is not eligible for participation in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the cabinet determines the petroleum storage tank owner or operator has satisfied the following requirements:

(a) Registered the facility with the cabinet in accordance with 401 KAR 42:020;

(b) Filed a notice of intent form with the cabinet to permanently close the petroleum storage tanks at the facility (if applicable) or to make a change-in-service (if applicable) to comply with the requirements of 401 KAR 42:070, and

(c) Reported a release to the cabinet as required by KRS 224.01-400 and KRS 224.01-405.

(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage.

Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage Tank Account. (1) A petroleum storage tank owner's or operator's entry level shall be deducted from the overall reimbursement except as provided in subsections (2) and (3) of this section.

(2) An entry level shall not be deducted from the overall reimbursement if the owner or operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the overall reimbursement if the owner or operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:060, for the facility and the laboratory analyses indicate corrective action is not required at the facility.

(4) Upon request by the petroleum storage tank owner or operator, the cabinet shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:
   1. 180 days from the discovery of the release, for soil remediation alone;
   or
   2. Twenty-four (24) months from the discovery of the release, for groundwater alone or for both soil and groundwater remediation;

(b) Received a no further action letter without additional measures being required.

Section 6. Newly Discovered Underground Storage Tank System. (1) A newly discovered underground storage tank system encountered at a facility during the performance of corrective action due to a release from a registered tank shall not affect an owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the owner or operator.

Section 7. Preestablished Fixed Cost Reimbursement. (1) All reimbursements shall be made on the basis of preestablished fixed costs as established in the "Contractor Cost Outline" (January 2006) incorporated by reference in Section 26 of this administrative regulation, except as provided for in Section 8 through Section 19 of this administrative regulation and 401 KAR 42:330.

(a) The preestablished fixed cost shall be identified within a written directive by the cabinet pursuant to 401 KAR 42:060 and shall be:

1. Itemized by the cabinet on the appropriate reimbursement cost worksheets attached to the written directive as identified below:

   a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet, DEP 6066C, (January 2006) incorporated by reference in Section 26 of this administrative regulation;
   b. "Final Site Investigation for a Facility" worksheet, DEP 6066D, (January 2006) incorporated by reference in Section 26 of this administrative regulation;

   2. Considered the final cost for the completion of the written directive and shall serve as an obligation and guarantee of payment in accordance with KRS 224.00-140(5).

(b) Fixed cost reimbursement shall be made after the following actions are completed:

1. The submittal and approval of an Application for Assistance in accordance with Section 2 of this administrative regulation;

2. A determination by the cabinet that the report submitted in response to each written directive is complete and meets the requirements of 401 KAR Chapter 42;

3. The submittal of payment documentation pursuant to the "Contractor Cost Outline", (January 2006) and the required documentation pursuant to Section 26 of this administrative regulation;

4. The submittal of signed worksheets provided with the written directive from the cabinet; and

(3) The initial fixed cost for over-excavation shall be identified on the "Over-Excavation" worksheet, DEP 6066E, (January 2006) incorporated by reference in Section 26 of this administrative regulation. An estimate of the tonnage removed shall be based on the volume and density of material in the proposed excavation area. The cabinet shall convert cubic yards to tons using a density of 1.5 tons per cubic yard. Actual reimbursement shall be based on:

   a. A submittal of weigh tickets; or
   b. The actual area of over-excavation, not to exceed the initial estimate as identified on the "Over-Excavation" worksheet, DEP 6066E, (January 2006).

(4) Preestablished fixed costs identified by the cabinet for corrective action agreements shall be determined based on the negotiated agreement between the cabinet and petroleum storage tank owner or operator.

Section 8. General Requirements for the Submittal of Claims for which there is no Preestablished Fixed Cost. (1) Any eligible costs for which a directive was issued prior to the effective date of this administrative regulation shall be submitted on the forms in
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effect at the time the directive was issued.

(2) Cost estimates shall be submitted on the appropriate reimbursement cost worksheet(s), and approved by the cabinet, prior to incurring costs for actions not covered in Section 7 or Section 10 of this administrative regulation. The cabinet shall establish a reimbursable amount based on a cost estimate submitted by the contractor, which shall serve as an obligation and guarantee of payment in accordance with KRS 224.60-140(5).

(3) The request for reimbursement associated with a written directive that does not include a preestablished fixed cost, issued by the cabinet after the effective date of this administrative regulation, shall be submitted on the appropriate reimbursement cost worksheet as an attachment to the required technical report.

(4) The cabinet may request additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable.

(5) If the claim is determined to be deficient, the cabinet shall notify the applicant of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the cabinet within thirty (30) days of the receipt of the notice by the applicant. The cabinet shall grant the applicant a thirty (30) day extension if the written request is received within thirty (30) days of receipt of the notice of deficiency.

(6) If the applicant fails to correct the deficiency or to supply the additional information required by the cabinet, that portion of the claim shall be denied.

(7) The cabinet shall determine pursuant to KRS 224.60-140(7) whether the costs submitted in the claim are eligible for reimbursement.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the cabinet.

Section 9. Claim Submittal for Declared Emergency Actions. (1) Reimbursement for costs incurred to abate an environmental emergency shall be available to the responsible actions as directed and documented by the Environmental Response Team (ERT) under the terms of a declared emergency.

(2) The claim request shall include the following documentation if the costs submitted were initiated after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064 (January 2006);

(b) "Invoice Listing Form", DEP 6065 (January 2006);

(c) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A (January 2006);

(d) Original invoices as required in the "Contractor Cost Outline" (January 2006);

(e) Documentation outlining the specific cabinet directives and dates from ERT; and

(f) Documentation to establish that the petroleum storage tank owner or operator has complied with the administrative regulations or written directives from ERT.

(3) Claims submitted shall be reviewed within thirty (30) days of receipt.

(4) Future reimbursement for actions subsequent to the close of the declared emergency will be contingent upon written directives from the cabinet or entering into a corrective action agreement.

Section 10. Third-party Claims. Third-party claims shall be submitted in accordance with 401 KAR 42:070 and shall include the "Third-party claim Form", DEP 6078, (January 2006).

Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has been directed by the cabinet to initiate corrective action that requires the purchase of equipment costing in excess of $1,000 shall obtain prior approval of the purchase by submitting a "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006) form.

(2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070, (January 2006) shall be limited to the purchase price, less determined salvage value, as approved by the cabinet.

(3) The cabinet shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed, in accordance with the " Contractor Cost Outline", (January 2006).

Section 12. Claims for Initial Abatement-free Product Recovery. (1) Reimbursement requests for costs incurred during Initial abatement or free product recovery actions, as directed by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the following documentation if the written directive is issued by the cabinet after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Initial Abatement and Free Product Recovery" worksheet, DEP 6066B, (January 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (January 2006)

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.

Section 13. Claims for Quarterly Monitoring Reports and System Maintenance. Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting shall be limited to those actions specified in the approved and implemented corrective action plan.

(1) If the work was initiated after the effective date of this administrative regulation claim requests shall include the following documents:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G, (January 2006); and

(d) Original invoices as required in the "Contractor Cost Outline", (January 2006)

(2) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.


(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:

(a) "Claim Request Form", DEP 6064, (January 2006);

(b) "Invoice Listing Form", DEP 6065, (January 2006);

(c) "Over-Excavation" worksheet, DEP 6066E, (January 2006);

(d) Original invoices as required in the "Contractor Cost Outline", (January 2006); and

(e) Backup documentation required to support each task as required on the worksheet.

Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6056H, (January 2006) shall be completed to initiate reimbursement for the following actions:

(a) Non-emergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;

(b) Transportation and disposal of drums containing purified water or soil cuttings not reimbursed on a previous claim;

(c) Initial review of facility information by a newly contracted certified company and contractor having no previous knowledge of the facility;

(d) Decommissioning of cisterns or drinking water wells as required to address conditions at the regulated facility;

(e) Monitoring well pad replacement;

(f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective action activities;

(g) Off-site access agreements, if required by the cabinet;

(h) Dye trace tests;

(i) Backfill subsidence repair; or

(j) Corrective action activities proposed by the petroleum stor-
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age tank owner or operator, or directed by the cabinet that are not
listed in this administrative regulation.
(2) The claim request shall include the following documentation
if the incurred costs submitted were initiated after the effective date
of this administrative regulation:
(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Miscellaneous Tasks" worksheet, DEP 6066H, (January
2006);
(d) Original invoices as required in the "Contractor Cost Out-
line", (January 2006); and
(e) Backup documentation to support each task as required on
the worksheet.
(3) Reimbursements shall be contingent upon a determination
by the cabinet that the submitted reports are accurate and com-
plete.

Section 16. Claims for Facility Restoration. (1) A reimburse-
ment request for costs related to facility restoration shall include
the following information:
(a) "Claim Request Form", DEP 6064, (January 2006);
(b) "Invoice Listing Form", DEP 6065, (January 2006);
(c) "Facility Restoration" worksheet, DEP 6066L, (January
2006);
(d) Original invoices as required in the "Contractor Cost Out-
line", (January 2006);
(e) Backup documentation required to support each task as
required on the worksheet and
(f) A site map for a facility, to scale, depicting the area im-
acted by corrective action (for example, over-excavation), the
area of facility restoration and photographs of the area before and
after facility restoration.
(2) Reimbursements shall be contingent upon a determination
by the cabinet that the submitted reports are accurate and com-
plete.

Section 17. Corrective Action Agreements. At the time
the cabinet approves an owner or operator's intent or final corrective
action plan pursuant to 401 KAR 42.060, the cabinet and the
owner or operator shall for purposes of reimbursement enter into a
Corrective Action Agreement which shall set forth:
(1) Method of reimbursement;
(2) Amount to be reimbursed; and
(3) Rate or schedule of payment.

Section 18. Criteria for Approval of a Claim. (1) A claim with
an approved Application for Assistance for the Financial Responsibility
Account or the Petroleum Storage Tank Account shall be reviewed to
determine if:
(a) The corrective action complies with 401 KAR Chapter 42
and written directives from the cabinet;
(b) Each cost is necessary, reasonable and consistent with the
requirements of 401 KAR Chapter 42 and written directives from the
cabinet;
(c) The claim form is accurate and complete;
(d) All supplemental information has been supplied;
(e) The applicant has complied with Section 25 of this admin-
istrative regulation; and
(f) Annual tank fees have been paid as required by KRS
224.60-150.
(2) Reimbursement shall be made by a check remitted to the
eligible petroleum storage tank owner or operator.

Section 19. Eligible Reimbursement Rates. Established unit
costs and rates for eligible reimbursement are identified in the
"Contractor Cost Outline", (January 2006) Incorporated by refer-
ence in Section 25 of this administrative regulation.

Section 20. Signatures. (1) Forms required by this administra-
tive regulation for which a signature is mandated shall be signed by
an eligible petroleum storage tank owner or operator as follows:
(a) For a corporation, by:
1. A president or secretary;
2. The duly authorized representative or agent of the president
or secretary if the representative or agent is responsible for overall
operation of the facility; or
3. A person designated by the board of directors by means of a
corporate resolution.
(b) For a partnership, sole proprietorship or individual, by a
general partner, the proprietor or individual respectively; or
(c) For a municipality, by:
1. A principal;
2. An Executive officer; or
3. A duly elected official.
(2) A claim form or Application for Assistance shall also be
signed by:
(a) The certified contractor who is responsible for overseeing
corrective action, unless corrective action commenced prior to
March 1, 1995; and
(b) An authorized representative of the certified company, un-
less corrective action commenced prior to July 1, 1999.
(3) The owner or operator shall submit documentary evidence
to substantiate the legality of an authorized representative's power
of agency or power of attorney.

Section 21. Loss of Future Reimbursement Eligibility. (1) A
petroleum storage tank owner or operator shall be ineligible to
receive future reimbursement from the Financial Responsibility
Account or Petroleum Storage Tank Account if the petroleum stor-
age tank owner or operator has:
(a) Knowingly or intentionally submitted false or inaccurate
information to the cabinet;
(b) Knowingly made a false statement, representation, or certi-
fication in an application, reimbursement request, or other docu-
ment submitted to the cabinet.
(2) A cost incurred by, or paid from, the cabinet which is based
on false or inaccurate information, a false statement, representa-
tion, or certification shall be recovered by the cabinet from the
person who asserted the false or inaccurate information, false
statement, representation, or certification.
(3) The cabinet shall have the right to recover the money paid
to a petroleum storage tank owner or operator, or a contractor if:
(a) The amount was paid due to an error of the cabinet;
(b) The amount was paid due to a mistake, error, or inaccurate
information in the claim submitted by the petroleum storage tank
owner or operator or in an invoice submitted by a contractor; or
(c) A person has obtained reimbursement from the cabinet by
fraud or intentional misrepresentation.

Section 22. Subrogation. Prior to making reimbursement of a
claim, the cabinet shall acquire, by subrogation, the rights of the
person receiving reimbursement to recover the amounts paid by
the cabinet for the performance of corrective action from the per-
son responsible or liable for the release.

Section 23. Facility Inspections. The cabinet may conduct in-
spections in accordance with KRS 224.60-130(1)(l) to determine the
reasonableness and necessity of the costs of corrective action.
(1) The cabinet shall be authorized to enter and inspect a facility
seeking reimbursement for the costs of corrective action.
(2) Refusal to allow a cabinet employee entry and inspection of
a facility shall make the owner or operator ineligible for reimburse-
ment. Money previously paid to the petroleum storage tank owner
or operator of the facility shall be repaid to, or recovered by, the
cabinet.
(3)(a) Cabinet personnel shall be present at the facility during
all petroleum storage tank permanent closure activities, except as
provided in paragraphs (d) and (e) of this subsection;
(b) A petroleum storage tank owner or operator shall contact
the appropriate Field Operations Branch regional office, by certified
mail, to schedule a date to have an inspector present at the facility
during petroleum storage tank permanent closure activities. The
certified mail notice shall be received a minimum of fourteen (14)
calendar days prior to commencement of the permanent closure;
(c) If the inspector cannot be present at the facility on the day
scheduled by the notice sent as required in paragraph (b) of this
subsection, he may, by written notice, require the petroleum stor-
age tank owner or operator to reschedule the permanent closure to
a proposed date. This notice must be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner;
(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty; and
(e) This provision shall not apply to an emergency removal ordered by the cabinet.

(4) (a) A petroleum storage tank owner or operator shall:
1. Provide an inspector full access to an area or well for the collection of samples;
2. Split samples obtained at the facility with the cabinet, if required by the inspector;
3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator; and
4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.
(b) The cabinet shall not reimburse the costs of resampling, if the cabinet determines that proper sampling, sample handling or analytical protocols were not adhered to by the contractor or certified laboratory.
(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.

Section 24. Affidavits and Waivers. The following forms shall be submitted to the cabinet prior to reimbursement:
(1) "Payment Verification Affidavit Form", DEP 6075, (January 2006); and
(2) If required by KRS 224.60-140(18), a "Payment Waiver Form", DEP 6077, (January 2006) executed by each affected vendor and subcontractor.

Section 25. Account Balance. (1) The unobligated balance of the Financial Responsibility Account shall not be less than $1,500,000, so as to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224 60-135. The $500,000 reserved for the cabinet's emergency abatement actions shall be renewed in that amount annually.
(2) If the unobligated balance of the Financial Responsibility Account is $1,500,000 or less, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than $1,500,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than $1,500,000. When the suspension is lifted, the priority for reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Assistance", DEP 5063, (January 2006);
(b) "Claim Request Form", DEP 6064, (January 2006);
(c) "Invoice Listing Form", DEP 6065, (January 2006);
(d) "Capital Equipment Claim Form", DEP 6070, (January 2006);
(e) "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006);
(f) "Payment Verification Affidavit", DEP 6075, (January 2006);
(g) "Payment Waiver Form", DEP 6077, (January 2006);
(h) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A, (January 2006);
(i) "Initial Abatement & Free Product Recovery" worksheet, DEP 6066B, (January 2006);
(j) "Initial and Intermediate Site Investigation and Site Check for Facilities" worksheet, DEP 6066C, (January 2006);
(k) "Final Site Investigation for a Facility" worksheet, DEP 6066D, (January 2006);
(l) "Over-Excavation" worksheet, DEP 6066E, (January 2006);
(m) "Quarterly Monitoring Reports and System Maintenance" worksheet, DEP 6066G, (January 2006);
(n) "Miscellaneous Tasks" worksheet, DEP 6066H, (January 2006);
(o) "Facility Restoration" worksheet, DEP 6066I, (January 2006);
(p) "Third Party Claim Form", DEP 6078, (January 2006); and
(q) "Contractor Cost Outline", (January 2006).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may also be obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

J. W. CLAY, DEPUTY Secretary for LaJanus A. Wether, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 am ET at the Capital Plaza Tower Auditorium, 500 Metro Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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 May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Rally Road, Frankfort, Kentucky 40601, phone (502) 567-8761, fax (502) 564-4049, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Bruce Scott
(1) Provide a brief summary of:
(a) What this administrative regulation does: As described in KRS 224.60, establishes the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application and receive reimbursement for the cost of corrective action due to a release from a petroleum storage tank.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to advise the owners or operators of petroleum storage tanks regarding the procedures to apply for reimbursement of corrective action costs.
(c) How this administrative regulation conforms to the content of the enacting statute: This administrative regulation establishes the procedures to apply for reimbursement of corrective action costs under 401 KAR Chapter 42.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains the eligibility requirements and the reimbursement procedures for a petroleum storage tank owner or operator to recover eligible corrective action costs. This administrative regulation also explains how to utilize the incorporated materials during the process for application or reimbursement.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the context of the enacting statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those individuals and local government entities that own or operate petroleum storage tanks in the Commonwealth of Kentucky. Approximately 14,400 UST contractors performing corrective action in the Commonwealth of Kentucky will also 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: It is difficult to ascertain the impact of this administrative regulation. Certain aspects of the reimbursement process have been streamlined, which will lessen the efforts and resources required by the affected entities to obtain reimbursement of eligible corrective action costs. However, other aspects of this administrative regulation place a greater responsibility upon the owner or operator and contractor to control costs and effectively manage corrective action projects.

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

(a) Initially: There will be no cost associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through 2 federal grants and the collection of the petroleum environmental assurance fee, as described in KRS 224.60-145.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all owners and operators of USTs.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation may affect local government entities that own or operate petroleum storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to the local government entities that own or operate petroleum storage tanks. 40 C.F.R. Part 280, KRS 224.60-130 and 224.60-140 authorize the promulgation of 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 in effect. If specific dollar estimates cannot be determined, provide a narrative to explain the fiscal impact of the administrative regulation.

- Revenues (+/-): No effect.
- Expenditures (+/-): See below.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

415 KAR 1:051. Repeat of 415 KAR 1:050.

RELATES TO: KRS 224.60-115, 224.60-120, 224.60-130, 224.60-140, 40 C.F.R. Part 280

STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation shall be repealed, because the information contained within 415 KAR 1:050 has been incorporated into 401 KAR 42:005.

Section 1. 415 KAR 1:050, Definitions for 415 KAR Chapter 1, is hereby repealed.

JOHN W. CLAY, Deputy Secretary
For LaJuanita S. Wacker, Secretary
APPROVED BY AGENCY: April 12, 2006
FILED WITH LRC: April 13, 2006 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10 a.m. ET at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 2006. Five workdays prior to the hearing, if their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Bruce Scott, P. E., Director, Division of Waste Management, 14 Rally Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: R. Bruce Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 415 KAR 1:050 due to those definitions being moved to 401 KAR 42.005.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make improvements in the arrangement of UST Program regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by maintaining the existing requirements of 401 KAR Chapter 42.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists by establishing the various requirements of the UST 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: Does not apply.

(b) The necessity of the amendment to this administrative regulation: Does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: Does not apply.

(d) How the amendment will assist in the effective administration of the statutes: Does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-
The amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky. Approximately 13,400 UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment; This administrative regulation will repeal regulations that are either inconsistent or have been relocated within 401 KAR Chapter 42 of the UST Program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no costs associated with implementation of this administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Implementation and enforcement of this administrative regulation is funded through federal grants and the restricted fund receipts described in KRS 224.60-150 and 224.60-145.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. This amendment simply repeals a regulation that has been recodified into 401 KAR Chapter 42.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation should not affect local governments that own or operate USTs.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of 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 (+/-): See below.

Expenditures (+/-): See below.

Other Explanation: The cabinet expects no significant impact from this administrative regulation.

EDUCATION CABINET
Board of Education
Department of Education
(New Administrative Regulation)


RELATES TO: KRS 158.840, 158.842, 158.844
STATUTORY AUTHORITY: KRS 158.844(7)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.844(7)(b) requires the Kentucky Board of Education to promulgate an administrative regulation for administration of the Mathematics Achievement Fund. This administrative regulation establishes the application and approval process for receipt of funds and the requirements and process for distribution of funds.

Section 1. Application Process. (1) A Kentucky public school district, including the Kentucky School for the Blind and the Kentucky School for the Deaf, shall be eligible to apply for a grant.
(2) A grant application shall be submitted by a local school district.
(3) A grant application shall respect a local school council's policy-making authority regarding instructional practices to meet identified mathematics needs.
(4) A grant application shall specify selected mathematics intervention strategies and program and diagnostic assessments.
(5) A grant application shall indicate the fiscal agent as a local board of education eligible to enter into a request-for-application to receive state education funds. The fiscal agent for the Kentucky School for the Blind or Deaf shall be the Kentucky Department of Education.

(6) Funds shall be made available to an eligible applicant through a request-for-application process.

(7) To be eligible for federal funding, an application shall:
   (a) Include the contents required by KRS 158.844; and
   (b) Specify the matching funds or in-kind contributions that will be allocated to directly support the implementation of the intervention strategies or program, as required by KRS 158.844.

(8) A grant application shall be subject to approval by the involved principal, superintendent, and the local board of education of a public school district submitting the grant to ensure the grant application includes adequate resources to implement the intervention strategies and program.

(9) Matching funds may be identified from other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds.

Section 2. Selection of Grants. (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:
   (a) Process for identifying at-risk students in mathematics;
   (b) Identification of the research-based diagnostic assessment and intervention strategies or program;
   (c) Plan for school and district professional development on mathematics diagnostic assessment and intervention strategies;
   (d) Implementation plan;
   (e) Program evaluation to include student performance data;
   (f) Level of individual commitment for teacher professional development;
   (g) Capacity to implement the intervention strategies or program;
   (h) Budget, including the efficient and effective use of proposed grant funds and matching funds.

(2) An application shall be reviewed as follows:
   (a) Independent evaluators shall review the applications based upon an approach recommended by the Committee for Mathematics Achievement and the Center for Mathematics; and
   (b) The Kentucky Department of Education shall approve funding based upon the results of the review. Consideration may be given to provide for geographic diversity and the number of at-risk students to be served.

(3) The independent evaluators shall have:
   (a) Knowledge of this administrative regulation, the appropriate statutes, the Kentucky Program of Studies (704 KAR 3.303), and the Academic Expectations (703 KAR 4.060); and
   (b) Experience with developmentally-appropriate mathematics Instruction, including background knowledge of the essential components of learning mathematics.

Section 3. Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the Kentucky Department of Education with guidance from the Committee for Mathematics Achievement and the Center for Mathematics.

(2) Grant funds shall be limited to direct costs to implement the diagnostic assessment and intervention services selected.

(3) Monitoring of awarded grants shall include at least the fol-
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owing:
(a) Fiscal reports submitted quarterly to the Department of Education;
(b) Annual program evaluation reports on the implementation of the diagnostic assessment and interventions; and
(c) Documented evidence of student progress results for the diagnostic assessment and intervention services, including criteria for progress on diagnostic assessments, state assessment data, and "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., data.

(4) The approved school district shall be eligible for a two (2) year renewable grant based on evidence supporting continuous progress.

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: April 13, 2006
FILED WITH LRC: April 13, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 30, at 2 p.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 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 May 31. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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 establishes the application and approval process for use of funds through the Mathematics Achievement Fund and process for distribution of funds.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.844.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the application and approval process for district receipt of funds, the requirements and process for distribution of funds as required to be included in regulation by KRS 158.844.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specifics for the application and approval process for district receipt of funds, the requirements and process for distribution of funds as required to be included in regulation by KRS 158.844.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment.
(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: This is not an amendment.
(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 districts will be eligible to apply on behalf of elementary schools with primary age students.

(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: Districts will use funds to put mathematics intervention programs in place to assist students who are struggling with mathematics.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. Funds are allotted in the budget to support the mathematics intervention program.
(b) On a continuing basis: Increased use of secretarial and consultant time to administer the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Mathematics Achievement Fund and 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 fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it.
The April meeting of the Administrative Regulation Review Subcommittee was held on Thursday, April 13, 2006, at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, and the roll call was taken. The minutes of the March 13, 2006 meeting were approved.

Present were:

Members: Senator Richard "Dick" Roeding, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Alice Kerr, Joey Pendleton, and Gary Tapp; Representatives James Bruce and Jon David Heathward.

LCR Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milan, Karen Howard, Emily Harkenrider, and Roslyn Hendrickson.

Guests: Tom Howard, Angela Robinson, Finance and Administration Cabinet; Lon Flanery, Kentucky Housing Corporation; Mark Cramer, Jim Lane, Kentucky Department of Fish and Wildlife Resources; Amy Barker, Department of Corrections; Stacy Wamecke, Roger Wright, Kentucky State Police Forensic Lab; LaDonna Koebel, Libby Mills, Sherre Smith-Jones, Richard Thomas, Department of Juvenile Justice; Gail Robinson, Department of Public Advocacy; Kevin Noland, Kentucky Board of Education; Treva Donnell, Glenn Jennings, Office of Insurance; Greg A. Jennings, Colleen Keefe, Office of Financial Institutions; Jeff Barnett, Trish Howard, Lane Jurek, and Jason Moseley, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Thursday, April 13, 2006, and submits this report:

Other Business:

Co-Chair Roeding stated that House Bill 374, which included provisions similar to Senate Bill 86 which he sponsored, was enacted by the 2006 Regular Session of the General Assembly and was signed into law by the Governor. It assisted Kentucky small businesses and other Kentucky citizens with the administrative regulation process in four ways. First, it required an analysis to determine the impact of proposed administrative regulations on regulated entities. Second, it required administrative bodies to consider the costs that an administrative regulation may cause state or local government to incur. Third, it enabled citizens to request notification regarding administrative regulations by completing an electronic registration form located on a centralized state government Web site. Lastly, the bill required administrative bodies to designate a small business ombudsman to respond to inquiries on administrative regulations and to report those inquiries annually.

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Kentucky Private Activity Bond Allocation Committee 200 KAR 15:010. Formula for allocation of private activity bonds. Tom Howard, executive director, represented the committee.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Game 301 KAR 2:041. Shooting preserves and foxhound training enclosures. Mark Cramer, deputy commissioner, and Jim Lane, director, represented the department.

In response to a question by Representative Bruce, Mr. Lane stated that even though the trapping season for coyotes was limited, a farmer could trap year-round if the farmer was experiencing damage.

In response to a question by Representative Renhardt, Mr. Lane stated that the farmer needed to document the damage by contacting a conservation officer or game warden.

In response to a question by Co-Chair Roeding, Mr. Lane stated that there was a year-round season for shooting coyotes because non-target capture was not an issue like it was with trapping.

A motion was made and seconded to approve the following amendment: to amend Section 4 to correct minor drafting errors without objection, and with agreement of the agency, the amendment was approved.

301 KAR 2.251. Hunting and trapping seasons and limits for furbearers and small game.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary 501 KAR 6:020. Corrections policies and procedures. Amy Barker, counsel, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 1 and the material incorporated by reference to: (1) delete CPP 1.1; (2) renumber CPP 4.7 as 3.17 for organizational purposes, and (3) update the requirements for live work projects in CPP 20.1. Without objection, and with agreement of the agency, the amendment was approved.

Department of State Police: DNA 502 KAR 32.010 & E. Centralized database for DNA identification records. Roger Wright, assistant general counsel, and Stacy Wamecke, DNA database supervisor, represented the department.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY and NECESSITY. FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 3, 4, and 8 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.


Gail Robinson, counsel, Department of Public Advocacy, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Pullin, Ms. Koebel stated that the pending lawsuit against the department regarding the classification and placement of youth did not involve this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete an inapplicable citation; and (2) to amend Section 1 and DJJ 609 2 to require written notification to the court for all transfers or placements of juveniles and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Board of Education: Department of Education: School Terms, Attendance and Operation 702 KAR 7.065. Designation of agent to manage high school interscholastic athletics. Kevin Noland, general counsel, represented the board.

In response to questions by Co-Chair Roeding and Co-Chair Pullin, Mr. Noland stated that the Board agreed to continue the use of the terms BCE (Before the Common Era) and CE (Common Era) because of their use in national tests.

Senator Pendleton requested that the Board inform the subcommittee of any prominent issues in education administrative regulations that were reviewed by the Education Assessment and Accountability Review Subcommittee. Mr. Noland agreed to do so.
702 KAR 7:125. Pupil attendance. A motion was made and seconded to approve the following amendment: to amend Sections 7, 12, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Agents, Consultants, Solicitors and Adjusters
806 KAR 9 310. Vatical settlement broker license. Glenn Jennings, executive director, and Treva Donnell represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the entire administrative regulation to implement Senate Bill 107, enacted during the 2006 Regular Session of the General Assembly, which allowed a licensed insurance agent to act as a vatical settlement broker without being licensed as a vatical cottomen broker if the agent complied with notification and other requirements; and (2) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Health Insurance Contracts
806 KAR 17:160 Creditable coverage for health insurance. 806 KAR 17:330. Kentucky Access health benefit plans. In response to a question by Co-Chair Roeding, Mr. Jennings stated that this amended administrative regulation updated the health benefit plans offered by Kentucky Access to reflect the recent changes to the standard health benefit plan. By statute, Kentucky Access was required to base their health benefit plans on the current standard health benefit plan.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct a statutory citation; and (2) to amend Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Financial Institutions: Securities
808 KAR 10.010. Forms for application, registration; notice filing; reporting and compliance. Greg Jennings, general counsel, and Colleen Keeffe, director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 and 2 to: (a) correct the title and edition dates of the material incorporated by reference; and (b) comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10.200. Investment advisers' minimum liquid capitalization; bond. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, the administrative regulation; (3) to amend Section 1 to move requirements and standards from the definition of "custody" to a newly-created Section 2, to comply with KRS 13A.222(4)(d); (4) to amend Sections 2, 3, and 4 to delete the requirement that specified notifications be filed on Form ADV; and (5) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration
103 KAR 1 050 & E. Forms manual.

Income Tax; General Administration
103 KAR 15.140 & E. Biodiesel tax credit.

Income Tax; Withholding
103 KAR 18 070 & E. Supplemental wages and other payments subject to withholding.

OFFICE OF THE GOVERNOR: Kentucky Infrastructure Authority: Authority

GENERAL GOVERNMENT CABINET: Real Estate Commission
201 KAR 11:011 & E. Definitions for 201 KAR Chapter 11.
201 KAR 11:121 & E. Improper conduct.

Board of Chiropractic Examiners
201 KAR 21 031. Board meetings.
201 KAR 21 041. Licensing; renewals, fees.
201 KAR 21 045. Specialties.
201 KAR 21 051 Board hearings, complaints.
201 KAR 21 055. Colleges and universities; accreditation, approval.
201 KAR 21 060. Clinic; offices.
201 KAR 21 065. Professional advertising.
201 KAR 21 070. Licensing examination requirements.
201 KAR 21 075. Peer review procedures and fees.
201 KAR 21 080. Seventy-two (72) hour night of rescission.
201 KAR 21 085. Preceptorship program.
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201 KAR 21.095. Licensure and registration of persons performing peer review.
201 KAR 21:100. Minimum standards for recordkeeping/itemized statements.

COMMERCE CABINET: Department of Parks: Parks and Campgrounds
304 KAR 1.060. Boat ramp fees.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training:
General Training Provision
503 KAR 3:050 & E. Telecommunications academy; graduation requirements, records.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Office of Occupational Safety and Health
803 KAR 2:180. Recordkeeping; reporting; statistics.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:190 & E. Drug testing policies at a state operated facility for persons with mental illness or mental retardation.

The subcommittee adjourned at 10:55 a.m. until Thursday, May 11, 2006.
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OTHER COMMITTEE REPORTS

COMPILE’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.

Senate Standing Committee on Health and Welfare
Meeting of March 1, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of March 1, 2006, having been referred to the Committee on February 1, 2006, pursuant to KRS 13A.290(9):

201 KAR 5.010
201 KAR 8.185
201 KAR 8.220
201 KAR 8.277
902 KAR 20.106
902 KAR 20.190
902 KAR 45.020 & E
921 KAR 2:370
922 KAR 1:470

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 1, 2006 meeting, which are hereby incorporated by reference.

House Standing Committee on Health and Welfare
Meeting of March 2, 2006

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Welfare for its meeting of March 2, 2006, having been referred to the Committee on February 1, 2006, pursuant to KRS 13A.290(9):

201 KAR 5.010
201 KAR 5.165
201 KAR 8.220
201 KAR 8.277
902 KAR 20.106
902 KAR 20.190
902 KAR 45.020 & E
921 KAR 2:370
922 KAR 1:470

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 2, 2006 meeting, which are hereby incorporated by reference.

Senate Standing Committee on Health and Welfare
Meeting of March 8, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of March 8, 2006, having been referred to the Committee on March 1, 2006, pursuant to KRS 13A.290(9):

201 KAR 20.240
201 KAR 20.280
902 KAR 8.060
902 KAR 8.070
902 KAR 8.080
902 KAR 8.090
902 KAR 8.096

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 8, 2006 meeting, which are hereby incorporated by reference.

922 KAR 5:070 & E
922 KAR 5:102 & E
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 32 of the Administrative Register from July, 2005 through June, 2006. 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 31 are those administrative regulations that were originally published in VOLUME 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 32 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 32 of the Administrative Register, and is mainly broken down by agency.
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The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally published in Volume 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations expire 170 days from publica-
tion; or 170 days from publication plus number of days of
requested extension; or upon replacement or repeal, which-
ever occurs first.)

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**EMERGENCY ADMINISTRATIVE REGULATIONS:**

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* Statement of Consideration not filed by deadline

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