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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet Tuesday, December 12, 2006 at 10 a.m., in Room 149 of the Capitol Annex Building, Frankfort, Kentucky. See tentative agenda on pages 1489-1491 of this Administrative Register.
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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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17 KAR 3.010. Calculation of resident charges at state veterans' nursing homes.
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Filing and Publication

Administrative bodies shall file with the Regulators 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.
STATEMENT OF EMERGENCY

301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish waterfowl hunting seasons must do so within the federal frameworks. Development of federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal waterfowl hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until just a few weeks prior to the start of the state's waterfowl season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by November 15, 2006. This emergency administrative regulation is identical to the ordinary administrative regulation filed at the same time.

ERNIE FLETCHER, Governor
MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 1, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish framework hunting seasons and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.

(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(3) "Snow goose" means a snow goose or Ross' goose.

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2.222, 301 KAR 2.225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser.—Except—Canvasback. (1) Season dates. There shall be a split season statewide.

(a) November 22 [24] through November 29 [23]; and

(b) December 4 [6] through the last Sunday in January.

(2) Canvasback season dates. Statewide—December 29 through the last Sunday in January.

(3) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than one (1) hen mallard;
2. Two (2) wood ducks;
3. One (1) black duck;
4. Two (2) redheads;
5. One (1) pintail;
6. Two (2) scapu;
7. Three (3) mottled ducks;
8. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than two (2) (one (1)) hooded merganser.

(2) [4] The possession limits shall be double the daily bag limit.

Section 4. Gun and Archery Seasons and Bag Limits for Geese. (1) White-fronted goose and brant season dates: Thanksgiving Day through January 31, except that hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulations is reached.

(2) Snow goose season dates.

(a) Regular season: Thanksgiving Day through January 31; except for the portion [part] of Fulton County in the Western Goose Zone, which shall have an ending date of February 15.

(b) Conservation Snow Goose Order.

1. The Conservation Snow Goose Order in the Western Duck Zone shall be February 1 through February 6 [3] and February 8 [5] through March 31, except the portion of Fulton County in the Western Goose Zone.

2. In the portion of Fulton County within the Western Goose Zone, the Conservation Snow Goose Order shall be February 16 through March 31.

3. [Uncase—otherwise specified below:]

(a) If the Canada goose quota is reached in either the Henderson Union or Ballard reporting area on or after January 30, then the Snow Goose Season will also close in that reporting area.

(b) The Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day; and

(c) In the Western Goose Zone, if the quota is reached and the season for Canada geese is closed on or after January 30, the Snow Goose Season will also close and the Snow Goose Conservation Order will begin one-half (1/2) hour before sunrise on the following day.

2. Rest of state: February 1 to March 31.

(3) Canada goose season dates shall be from the starting date listed below through January 31, except as provided in subparagraph 8 and 8 of paragraph (a) of this subsection.

(a) The season shall not open until:

1. December 4 [6] in the Western Goose Zone, including the portion of Fulton County which is in the Western Goose Zone;

2. December 13 in the Eastern Goose Zone;

3. December 13 in the Pernyroyal-Coalfield Goose Zone;

4. December 13 in the West-Central Kentucky Hunt Zone; and

(b) [5] The last day of hunting shall be February 15 in the portion [part] of Fulton County[,] which is in the Western Goose Zone.

(c) [6] There shall be a split season in the northeast Kentucky goose zone:

1. [a] December 30 [34] through January 1 [2] [8]; and


(c) [6] Hunting-for-dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulations is reached.

(d) A person shall not goose hunt:

(a) The areas of Laurel River Lake as posted by sign; and

(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes 2006-07 waterfowl season dates and bag limits according to federal frameworks set by the U.S. Fish and Wildlife Service (USFWS). Most changes are the result of calendar shift. Other amendments were limited to changes on wildlife management areas.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2006-07 early migratory bird seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorizes the department to establish waterfowl hunting season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for migratory bird game bird hunting.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How the amendment conforms to the authorizing statutes: The amendment establishes season dates as provided in KRS 150.025(1) and 150.600(1).

(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 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the hunting guide. Hunters will have to review the hunting guide for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is based upon current scientific knowledge of species ecology, and complying with the regulations herein will permit continued opportunity to hunt migratory game birds.

(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 source of funding is the state Game and Fish 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. 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: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the total administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no increase or decrease in expenditures or revenues to the Kentucky Department of Fish and Wildlife Resources as a result of the amendment to this administrative regulation.

5. How will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.

6. (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

7. (c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

8. (d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the USFWS and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, number of days a season is open to hunting, and daily bag and possession limits 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional, and/or state stocks of birds important to Kentucky’s migratory bird hunters.

STATEMENT OF EMERGENCY

301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on state wildlife management areas. Waterfowl hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. The federal frameworks also affect some regulations on state wildlife management areas and are addressed during the same time frame as the general waterfowl season. Under federal law, states that wish to establish waterfowl hunting seasons must do so within the federal frameworks. Development of federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal waterfowl hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until just a few weeks prior to the start of the state’s waterfowl season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by November 15, 2006. This emergency administrative regulation is identical to the ordinary administrative regulation filed at the same time.

ERNIE FLETCHER, Governor
MARK S. Cramer, Deputy Commissioner, for Dr. Jonathan Gassert, Commissioner

COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340, 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl. This administrative regulation establishes waterfowl seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Entomophs Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:

(a) A concealing enclosure;

(b) A pit; or

(c) A boat.

(2) "Party" means:

(a) A person hunting alone; or

(b) From two (2) to four (4) persons who share a blind.
(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.
(4) "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.
(5) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.
(6) "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing shot:
   (a) Made of lead;
   (b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
   (c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:
(1) A waterfowl hunter shall:
   (a) Hunt from a blind unless hunting in flooded, standing timber;
   (b) Not hunt from or establish a blind:
      1. Within 100 yards of another blind; or
      2. Within fifty (50) yards of a property line; and
   (c) Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:
   (a) A waterfowl hunter shall not establish or hunt from:
      1. A permanent blind; or
      2. A blind within 200 yards of:
         a. Another blind; or
         b. A waterfowl refuge;
   (b) A person shall not hunt in a designated recreation area or access point;
   (c) More than four (4) persons shall not occupy a blind, and
   (d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of his hunt.
(2) A person wishing to establish or use a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, or Sloughs Wildlife Management Areas:
   (a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the department;
   (b) May designate one (1) other person as a partner;
   (c) Shall not hold more than one (1) permit per area; and
   (d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Sloughs Wildlife Management Areas:
      1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
      2. Shall be eighteen (18) years of age or older.
(3) The holder of a blind permit shall:
   (a) Construct or establish his blind before November 20 or forfeit the permit;
   (b) Not lock a blind; and
   (c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days of the close of the regular waterfowl season or be ineligible for a permit the following year.
(4) A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.
(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area:
(1) a. Statewide waterfowl seasons shall apply unless otherwise stated in this section.
   b. If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.
   c. Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.
   (2) A person shall not:
      (a) Hunt on an area or portion of an area marked by a sign as closed to hunting;
      (b) Enter an area or portion of an area marked by signs as closed to public access; or
      (c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.
(3) On wildlife management areas in Ballard County:
   (a) Sliding shall limit scale.
      1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and
      2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2).
   (b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.
   (c) At Ballard Wildlife Management Area:
      1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.
      2. The duck, coot, and merganser season shall be:
         a. December 7 through January 29 or
         b. Until the Ballard Reporting Area Canada Goose quota is reached.
   (d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
      1. A person shall:
         a. Not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day;
      b. Case his gun while using department-supplied transportation to and from a blind,
      c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and
      d. Not hunt after 12 noon.
      (d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
         1. A person shall:
            a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;
         b. Check in daily at the designated check station by 8 a.m. during duck and Canada Goose season; and
         c. Check out after 8 a.m. by depositing a card at a department designated drop point.
      2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.
      3. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.
      4. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.
      5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
      6. Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of designated points as marked by the department.
      7. Boat blinds shall not be permitted in flooded timber, except during periods of flood where no other access is possible. When boat blinds are permitted, there shall be a 200 yard distance between boat blinds.
8. On the Olmsted unit, a person shall not:
   a. Hunt waterfowl except from a permanent department blind or within twenty-five (25) feet of department blinds if the area is
      under flood and only accessible by boat; and
   b. Hunt waterfowl except from a blind location assigned by the
      department during Canada Goose season.
9. On the Peal unit:
   a. More than seven (7) parties shall not hunt at the same time
      on Buck Lake or Flat Lake;
   b. More than four (4) parties shall not hunt at the same time on
      Fish Lake;
   c. More than three (3) parties shall not hunt at the same time on
      First Lake or Second Lake;
10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a
    blind assigned by the department and unless:
    a. The season for these species is open; and
    b. The season for Canada Goose is also open.
(4) Barkley Lake Wildlife Management Area.
   a. A permanent blind may be used as specified in Section 4 of
      this administrative regulation.
   b. A person shall establish a permanent blind within ten (10)
      yards of his assigned and numbered blind marker within:
      1. An area bounded by the mouth of Donaldson Creek, the
         east side of the Cumberland River Channel and the boat ramp at
         Linton.
      2. An area bounded by the Pryor's Creek Light, the west side of
         the Cumberland River Channel, Land Between the Lake Road
         204 and river mile 73.5.
   c. The following refuge areas are closed to the public:
      1. From November 1 through February 15 within an area west of
         the main river channel between river mile 51 (Hayes Landing
         Light) and river mile 57.3 (Crooked Creek Light); and
         a. Including the row of islands on the west side of the main
            river channel; and
         b. Not including Taylor Bay and Jake Fork Bay.
      2. From November 1 through March 15 within Honker Bay and
         Fulton Bay as marked by buoys and signs.
   d. From October 15 through March 15, a person shall not hunt:
      1. Within 200 yards of; or
      2. Within the area defined by the levee between river mile 68.4
         and river mile 70.4.
(5) Barren River Lake Wildlife Management Area.
   a. A permanent blind may be used as specified in Section 4 of
      this administrative regulation.
   b. A waterfowl hunter:
      1. May use a breech-loading shotgun along the shoreline of the
         Peninsula Unit; and
      2. Shall not use a breech-loading firearm elsewhere on the
         area.
(6) Buckhorn Lake Wildlife Management Area. A permanent
    blind may be used as specified in Section 4 of this administrative
    regulation.
(7) Central Kentucky Wildlife Management Area. A person shall
    not hunt waterfowl from October 15 through January 14.
(8) Cumberland Lake Wildlife Management Area. The following
    sections shall be closed to the public from October 15 through
    March 15:
    a. Wesley Bend, the area bounded by Fishimg Creek, Beech
       Grove Road and Fishing Creek Road.
    b. Yellowwole, the area bounded by Fishing Creek Road and
       Hickory Nut Road.
    (9) Daniel Boone National Forest Pioneer Weapons Wildlife
        Management Area. A waterfowl hunter:
        a. May use a breech-loading shotgun along the shoreline of
           Cave Run Lake; and
        b. Shall not use a breech-loading firearm elsewhere on the
           area. Additional Enterprises Wildlife Management Area shall
           be closed to waterfowl hunting.
(10) Grayson Lake Wildlife Management Area. A person shall
    not hunt waterfowl:
    a. Within the no wake zone at the dam site marina;
    b. From the shore of Camp Webb;
    c. From the shore of the state park;
    d. On Deer Creek Fork; and
    e. Within three-quarters (3/4) of a mile from the dam.
(11) Green River Lake Wildlife Management Area.
    a. A permanent blind may be used as specified in Section 4 of
       this administrative regulation.
    b. Shooting hours shall be one-half (1/2) hour before sunrise
       until 2 p.m.
(12) Kaler Bottoms Wildlife Management Area. Shooting hours
    shall be one-half (1/2) hour before sunrise until 2 p.m.
(13) Land Between the Lakes.
    a. The following portions shall be closed to the public from
       November 1 through March 15.
       1. Long Creek Pond;
       2. The eastern one-third (1/3) of Smith Bay; and
       3. The eastern two-thirds (2/3) of Duncan Bay.
    b. The following portions shall be closed to waterfowl hunting:
       1. The Environmental Education Center; and
       2. Energy Lake.
    c. A person shall possess an annual Land Between the Lakes
       Hunting Permit when hunting waterfowl:
       1. Inland from the water's edge of Kentucky Lake or Barkley
          Lake; or
       2. From a boat over a flooded portion of Land Between the
          Lakes when the lake level is above elevation 359.
       d. A person shall not hunt waterfowl on inland areas during a
          quota deer hunt.
    e. A person shall not establish or use a permanent blind:
       1. On an inland area; or
       2. Along the Kentucky Lake shoreline of Land Between the
          Lakes.
    f. A waterfowl hunter shall remove decoys and personal
       effects daily.
(14) Nolin River Lake Wildlife Management Area. A permanent
    blind may be used as specified in Section 4 of this administrative
    regulation.
(15) Oblon Creek Wildlife Management Area. Shooting hours are
    one-half (1/2) hour before sunrise until 2 p.m.
(16) Ohio River Waterfowl Refuge.
    a. A person shall not hunt from October 15 through March 15
       on the Kentucky portion of the Ohio River from Smithland Lock
       and Dam upstream to a power line crossing at approximately river
       mile 911.5.
    b. Stewart Island shall be closed to the public from October 15
       through March 15, except for quota deer hunting.
(17) Peabody Wildlife Management Area.
    a. Shooting hours shall be one-half (1/2) hour before sunrise
       until 2 p.m.
    b. The following portions, as posted by signs, are closed to
       the public from October 15 through March 15:
       1. Gibraltar Mine, as bounded by Rockport Road, the Western
          Kentucky Parkway, Pond Creek and the P&M Hull Road;
       2. Sinclair Mine, as bounded by railroad tracks, the haul road
          and posted signs; and
       3. Homestead, as bounded by the haul road and the Green
           River.
(18) The main block of Robinson Forest Wildlife Management
    Area shall be closed to waterfowl hunting.
(19) Sloughs Wildlife Management Area.
    a. Shooting hours shall be one-half (1/2) hour before sunrise
       until 2 p.m.
    b. Waterfowl hunters shall exit the area by 2 p.m. during
       waterfowl season, except as authorized by the department.
    c. On the Grassy Pond Powell's Lake Unit, a waterfowl hunter:
       1. Shall use a permanent blind provided by the department;
       2. Shall remove decoys and personal effects from a blind or
          the vicinity of a blind daily; and
       3. A permanent blind may be used as specified in Section 4 of
          this administrative regulation.
    d. On the Jenny Hole-Highlands Creek Unit, a waterfowl
       hunter:
       1. Shall not establish or hunt from a blind closer than 200 yards
          from another hunting party; and
       2. Shall remove decoys and personal effects from blinds or the
vicinity of blinds daily.
3. A permanent blind may be used as specified in Section 4 of this administrative regulation.
(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
1. May hunt from a boat without regard to department blinds; and
2. Shall not hunt closer than 200 yards from another boat.
(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;
2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;
3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);
4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2);
5. Shall be accompanied by an adult if under eighteen (18) years of age; and
6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.
(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.
(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.
(i) South Shore Wildlife Management Area.
(j) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.
(k) The quota hunt requires advance application and selection.
(l) Hunters shall use department blinds.
(m) Department blinds are allocated by preseason draw. Applicants shall mail a three (3) by five (5) white index card in an envelope to Grayson Lake WMA post marked between November 1 and November 15.
(i) Starfire Wildlife Management Area shall be closed to waterfowl hunting.
(j) Taylorsville Lake Wildlife Management Area. The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for the waters from the boat ramp to the Highway 246 bridge are open to fishing until November 15 and the entire area is open for quota deer hunting.
(k) Westvaco Wildlife Management Area.
/a. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
/b. The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.
(c) A person shall obtain a Westvaco Permit before hunting.
(d) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.
(e) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.
(f) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.
(a) Greenbo State Park.
/(a) There shall be an open waterfowl hunt December 13 through January 15 on selected portions of Greenbo Lake and adjacent shoreline.
(b) Hunters shall check in each day at the front desk of the Greenbo Lake State Park or a designated check-in location on days in which the park office is not open.
(c) During check-in hunters shall be provided a map showing portions of the lake that are open to waterfowl hunting.
(d) Hunters shall check out each day at the front desk of the Greenbo Lake State Park or a designated check-out location on days in which the park office is not open.
(e) Statewide waterfowl hunting requirements apply.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeffer fish hatcheries.
(a) Dates shall be determined and published in the current Waterfowl Hunting Guide.
(b) Youth shall register in advance and carry postcard notification the day of the hunt.
(c) Youths shall be accompanied by an adult eighteen (18) years or older.
(d) One (1) youth shall not be accompanied by more than one (1) adult.
(e) One (1) adult may accompany two (2) youths.
(f) Hunting shall only be permitted from established blinds and hunters shall not change blinds.
(g) Four (4) hunters shall be permitted per blind.
(h) Hunters may only discharge firearms from the blind.
(i) Hunters may not have fifteen (15) shotshells per hunter.
(j) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.
(k) Firearms shall be anecse when traveling to and from the blind.
(l) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.
(m) All decoys and equipment shall be removed at the end of each day's hunt.
(n) Hunters shall report harvest by dropping hunt permit at designated location.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(a) Provide a brief summary of:
(b) What the administrative regulation does. This administrative regulation establishes 2006-07 waterfowl season dates and bag limits according to Federal Frameworks set by the U.S. Fish and Wildlife Service (USFWS). Most changes are the result of calendar shift. Other amendments were changes on wildlife management areas which facilitate meeting state waterfowl management objectives.
(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2006-07 waterfowl hunting seasons in accordance with the USFWS and such seasons provide opportunity on public lands that are consistent with meeting Kentucky's waterfowl management objectives.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no increase or decrease in expenditures or revenues to the Kentucky Department of Fish and Wildlife Resources as a result of the amendment to this administrative regulation.
5. How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.
6. How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.
7. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory bird seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.
3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky’s migra-
tory bird hunters.

STATEMENT OF EMERGENCY
301 KAR 2:223E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl on state wildlife management areas. Waterfowl hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish waterfowl hunting seasons must do so within the federal framework. Development of federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal waterfowl hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until just a few weeks prior to the start of the state’s waterfowl season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by November 15, 2006. This emergency administrative regulation is identical to the ordinary administrative regulation filed at the same time.

ERNIE FLETCHER, Governor
MARK S. CRAMER, Deputy Commissioner,
For DR. JONATHAN GASSETT, Commissioner

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:223E. Waterfowl reporting requirements.

RELATES TO: KRS 150.100, 150.105, 150.170, 150.175, 150.255, 150.280, 150.310, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 50 C.F.R. Parts 20, 21
STATUTORY AUTHORITY: KRS 150 025(1), 150 600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 3, 2006

NECESSITY, FUNCTION, AND CONFORMITY: 50 C.F.R. Parts 20 and 21 establish Canadian goose quota and require the state to close goose hunting season if these quotas are reached. KRS 150 025(1) and 150 600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner.

Section 1. Definition [Definitions—(4)] "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

(a) "Noncommercial waterfowl hunting area" means a waterfowl hunting area where a fee is not charged for hunting waterfowl.

(b) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;
(b) The owner or tenant of a noncommercial waterfowl hunting area;
(c) A person to whom the owner or tenant has assigned in writing or otherwise, the exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. When Canada goose season is open in the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2.224:

(1) The operator of a commercial waterfowl hunting area shall obtain a commercial waterfowl hunting permit for each area he operates:
(a) A tract of land divided by a public road may operate under one (1) permit;
(b) Tracts of land separated by property belonging to another person shall require a separate permit for each tract.
(2) The operator of a commercial waterfowl hunting area shall:
(a) Display the permit openly on the area; and
(b) Maintain complete and accurate records of waterfowl harvested on a daily waterfowl harvest report form.
(3) The operator of a noncommercial waterfowl hunting area shall:
(a) Obtain a noncommercial migratory goose hunting permit from the department;
(b) Display the permit openly on the area;
(c) Make a daily waterfowl harvest report form available to goose hunters;
(d) Require a goose hunter to enter:
1. His name, address, hunting license number and the date on the register before hunting; and
2. The number of geese taken by species before leaving the area.
(4) The operator of a commercial or a noncommercial waterfowl hunting area shall:
(a)ゴール本waterfowl harvest report card after shooting hours on Wednesday and Sunday.
(b) Mail or hand deliver:
1. The harvest report card to the address indicated so that it shall arrive no later than the following Monday or Thursday, and
2. The original forms to the address indicated so that they shall arrive within five (5) days after the close of the season;
(c) Obtain a form for two (2) months after the close of goose season;
(d) Allow an agent of the department or the U.S. Fish and Wildlife Service to inspect his permit and harvest record.
(5) A person goose hunting on a commercial or a noncommercial waterfowl hunting area shall:
(a) Enter his name, address, hunting license number and the date on the register before leaving the area;
(b) Record the number of geese taken by species on the register before leaving the area.
(6) A person goose hunting on a public area, including the Ohio or Mississippi River or their overflow areas, within the Ballard or Henderson-Union Reporting Areas shall:
(a) Obtain a daily waterfowl harvest report form;
(b) Before hunting, enter on the register:
1. His name, address, and hunting license number;
2. The name, address, and hunting license number of each member of the hunting party; and
3. The date;
(c) Mail or hand deliver the completed harvest report form to the address indicated on the form so that it arrives no later than the following Monday or Thursday.

Section 2, [a] A person goose hunting in the Northeast Special Hunt Zone, as defined in 301 KAR 2.224 shall:
(1) Carry a permit to hunt Canada Goose on special areas form
(2) Complete and return the harvest survey portion of the permit within ten (10) days after the season closes
(3) Not be eligible for permits the following year if they do not return harvest surveys within ten (10) days after the season closes.

Section 3, [4] Incorporation by Reference. (1) [The following material is incorporated by reference.
(a) Kentucky Permit to Hunt Canada Geese on Special Areas, August, 1995, is incorporated by reference.
(b) Noncommercial Migratory Goose-Hunting Permit, August, 1995.
(c) Application for Commercial Waterfowl-Shooting-Hunting-Permit, August, 1995.
(d) Assignment of Waterfowl Hunting Rights, August, 1995.
(e) Harvest Report Card, August, 1995.]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsmen's Lane [Game-Farm Road].
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: This regulation removes Canada goose reporting requirements in the Western Goose Zone as approved by the Mississippi Flyway Council and the U.S. Fish and Wildlife Service.
(b) The necessity of the administrative regulation: This administrative regulation establishes reporting requirements for waterfowl hunters in specific regions of the state. These requirements are no longer necessary to monitor the harvest of Mississippi Valley Population of Canada geese because of long-term change in migration behaviors. This change remains consistent with long-term management efforts for regional populations.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl hunting requirements in accordance with maintaining season dates and limits.
(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment will remove reporting requirements for the goose hunters in the Western Goose Zone.
(b) The necessity of the amendment to this administrative regulation: The necessity of this regulation is to remove harvest reporting requirements for Canada goose hunters in the Western Goose Zone because they are no longer deemed necessary due to change in migration and population makeup.
(c) How does the amendment conform to the authorizing statutes: The amendment establishes waterfowl harvest reporting requirements as provided in KRS 150.025(1) and 150.600(1).
(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 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The change in requirements will be published in the annual waterfowl hunting guide. Hunters will have to review this guide for the updated information to hunt legally during the specified season.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no additional cost to those identified in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is based upon current scientific knowledge of species ecology, and complying with the regulations herein will permit continued opportunity to hunt migratory game birds.
(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 source of funding is the state Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It 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: This administrative regulation does not directly or indirectly establish or increase any fees.
(9) TIERING: Is tiering applied? No. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no increase or decrease in expenditures or revenues to the Kentucky Department of Fish and Wildlife Resources as a result of the amendment to this administrative regulation.
(6) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.
(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fishery, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird...
Permits.
2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory bird seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.
3. Minimum or uniform standards contained in the federal mandate 50 C.F.R. Part 20 contains season frameworks for the following: Earliest opening and latest closing date, maximum number of days a species(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

**STATEMENT OF EMERGENCY**
902 KAR 45:150E

This emergency administrative regulation is being amended to update uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to ensure a safe and sanitary environment. This action must be taken on an emergency basis to allow small schools of thirty-five (35) or less to meet the sanitary guidelines of this administrative regulation. The necessity is created by schools which, as constructed, do not meet current standards for sanitation and hygiene, and currently do not have the latitude to meet the regulation in a nontraditional manner. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of the citizens of Kentucky because, as constructed, these schools do not provide their inhabitants sanitation standards adequate to prevent illness and disease caused by unsanitary conditions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTEL, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amendment)

902 KAR 45:150E. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990
STATUTORY AUTHORITY: KRS Chapter 13B, 194 050, 211.090, EO 96-862
EFFECTIVE: November 14, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 and 212.210 authorizes the Cabinet for Health and Family Services to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to ensure a safe and sanitary environment. EO 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health and Family Services.

Section 1. Citation of Administrative Regulation. This administrative regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. As used in this administrative regulation the following definitions shall apply:

2. "Local Board of Education" means a duly elected or appointed Board, any private agency, or organization that [who] operates, controls, or supervises a school or system of schools.
3. "Person" means an individual, firm, partnership, company, corporation, trust, association, or any public or private entity owning or operating a school.
4. "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities shall include only those areas used for school purposes.
5. "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other [facility] facilities and not made a fixed portion of any existing school structure.
6. "Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 100° F.

Section 3. Water Supply. (1) The water supply shall be potable, and from an approved public water supply. [Water from a municipally or water district]. It is available that an approved [a] public water supply [if a municipally or water district is not available], the supply for the school shall be developed and approved pursuant to applicable requirements of the [Natural Resources and] Environmental and Public Protection Cabinet. If an approved [a] public water supply is available, connections shall be made to it and the school supply shall be discontinued.
(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.
(3) Alternative delivery methods may be used only in schools of thirty-five (35) or less and with formal written approval by the Environmental and Public Protection Cabinet.
(4) All drinking water installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains, portable drinking water containers may be used. If portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet, and shall be maintained in a sanitary condition. If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available. If a public sewer is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet and the [Natural Resources and] Environmental and Public Protection Cabinet. If a public sewer system subsequently becomes available, connections shall be made to it and the school sewage disposal system shall be discontinued.
(2) All plumbing shall comply with the State Plumbing Code.
(3) All private sewage disposal systems shall be operated in a manner that does [not] create a nuisance or possible hazard to public health.
(4) Alternative methods may be used only in schools of thirty-five (35) or less and with formal written approval by the Cabie.
Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and hand-washing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair.

(4) A minimum of twenty (20) foot-candles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Disposable paper towels, cloth roll dispenser towels, or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All hand-washing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities pursuant to the requirements of the State Plumbing Code.

(7) For schools of thirty-five (35) or less students and where the school privileges do not have running potable water under pressure, the pupils shall be supplied with potable water from an approved public water supply or an approved water supply in the course for handwashing purposes from an insulated container, or sufficient volume, with a spout, used in an approved sanitary manner.

(8) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors. Schools with less than ten (10) students shall not be required to have self-closing doors. In those schools at which closed-environment type HVAC systems are provided, self-closing doors are not required if effective odor and insect entry control is demonstrated. In school restrooms and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor:

<table>
<thead>
<tr>
<th>Task or Area</th>
<th>Foot-candle Levels</th>
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<tbody>
<tr>
<td>Storage rooms</td>
<td>10</td>
</tr>
<tr>
<td>Hallways, stairways, auditoriums</td>
<td>20</td>
</tr>
<tr>
<td>General classrooms, gymnasiums,</td>
<td>50</td>
</tr>
<tr>
<td>and enclosed swimming pools</td>
<td></td>
</tr>
</tbody>
</table>

In certain areas such as industrial arts work benches, power tool stations, laboratories, and foundry locations, adequate lighting from home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially if safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept clean and in good repair at all times the school is in session.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleaned using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) School buildings shall be maintained free of insects or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(4) Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, and student's sack lunches. This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(5) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire department. All exits [ exists] shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

- Compresses and bandages to include:
  - A one (1) inch compress on adhesive
  - 1. Assorted stentle bandage compresses in individual packages
  - 3. Triangular bandages [two (2) x two (2) and (four (4) x four (4))]
  - 4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.
  - b. Wire or thin board splints
  - c. Adhesive tape
  - d. Scissors
  - e. Forceps [two (2) inch splinter]
  - f. Toothpicks
  - g. Paper cups
  - h. Disposable facial tissues [iodine (mild)]
  - i. Aromatic spirits of ammonia
  - j. Thermometer
  - k. Soap
  - l. Petroleum jelly
  - m. Biohazard waste bags
  - n. Noritek gloves
  - o. Cotton balls
  - p. One-way resuscitation mask
  - q. Water source/normal saline
  - r. Ice packs (chemical ice packs)
  - s. Reusable plastic bags
  - t. Telephone number of the nearest Poison Control Center
  - u. Safety pen
  - v. Flashlight with spare batteries

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses to render trained aid in case of...
Injury.
(3) All play areas shall be designed, landscaped, and protected to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.
(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.
(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and inspections as are necessary for the enforcement of this administrative regulation. (2) If a representative of the cabinet makes an inspection of a school, he shall record his findings on an [an official cabinet inspection report] Form DFS-301, [1] "School Inspection Report," and provide the principal or head teacher with a copy. The inspection report shall:
(a) Set forth the specific violation(s) if found;
(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;
(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in further action being taken; and
(d) Advise the party inspected of its right to request a hearing on Form DFS-212, [2] "Request for Hearing," before the cabinet. The notice shall be filed within ten (10) days of the completed inspection.
(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.
(4) Following inspections of school buildings and premises required by this administrative regulation, the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the provisions of this administrative regulation, facilities and equipment being used by existing schools on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM HACKER, MD, Commissioner

APPROVED BY AGENCY: November 7, 2006

FILED WITH LRC: November 14, 2006 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street S W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Vonia L. Grabee
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation regulates certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools
(b) The necessity of this administrative regulation: This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 211.180 to enforce the administrative regulations promulgated by the secretary of the Cabinet for Health and Family Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for sanitary requirements and the inspection process for schools in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow small rural schools of 35 or less children to use alternative methods in order to meet the requirements of existing sanitation regulations.
(b) The necessity of the amendment to this administrative regulation: Without this amendment there would be no latitude for schools of 35 or less children to apply alternative methods to meet the requirements of existing sanitation regulations and schools could not be opened.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment comes out the intent and provision of the authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth minimum sanitary standards for schools in the Commonwealth.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all new schools built to accommodate 35 or less children.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will build their schools to meet the administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of building the schools and operating and maintaining the schools in a safe and sanitary manner will not change.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Safe and sanitary schools.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: School is currently exempt from permitting fees and remain so under this change.
(7) Provide an assessment of: whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase is necessary. Schools are exempt from fees.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.
(9) TIERING: Is tiering applied? Tiering was not appropriate to this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including cities, counties, fire departments, or school districts) are made?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Counties in which these schools are located.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.180 and 212.210.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue will be realized by this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional amount.

(d) How much will it cost to administer this program for subsequent years? No additional amount.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The regulation is part of what public health is funded to do. No additional fees or costs are required to implement this regulation.

STATEMENT OF EMERGENCY

907 KAR 3:182E

This emergency administrative regulation is being promulgated to establish special reimbursement for in-state inpatient hospital care in accordance with 2006 Ky. Acts ch. 252, Part I, H.3.b.23 and must be enacted on an emergency basis in order to comply with 2006 Ky. Acts ch. 252, Part I, H.3.b.23. This emergency administrative regulation differs from the: Emergency administration regulation addressing the same subject that was filed with the Regulations Compiler on June 30, 2006 in that it implements lump sum payments to a freestanding psychiatric hospital, freestanding rehabilitation hospital, long-term acute care hospital and state-designated rehabilitation teaching hospital that is not state owned or operated; and Emergency administration regulation addressing the same subject that was filed with the Regulations Compiler on May 4, 2006 in that it implements a lump sum payment for in-state inpatient hospital care based on each hospital's Medicaid recipient diagnosis-related group (DRG) volume already adjudicated for claims with admission dates of July 1, 2005 through June 30, 2006 and in that it continues, rather than terminates, a DRG relative weight increase; and 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

MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations
(New Emergency Administrative Regulation)

907 KAR 3:182E. In-state Inpatient Hospital Special Reimbursement


EFFECTIVE: October 31, 2006

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 a 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, as mandated by 2006 Ky. Acts ch. 252, Part I, H.3.b.23, establishes special reimbursement for an in-state inpatient acute care hospital, a freestanding rehabilitation hospital, a freestanding psychiatric hospital, a long-term acute care hospital and a state-designated rehabilitation teaching hospital that is not state owned or operated.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

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

(3) "Diagnosis-related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

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

(5) "State-designated rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:

(a) Provides at least 3,000 days of rehabilitation care to Medicaid eligible recipients in a fiscal year;

(b) Provides at least seventy-five (75) percent of the statewide total of inpatient care to Medicaid eligible recipients; and

(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution postdischarge.

Section 2. In-state Inpatient Hospital Reimbursement. Pursuant to 2006 Ky Acts ch. 252, Part I, H B 23 the department shall:

(1) Reimburse a lump sum payment to an in-state inpatient acute care hospital based on the hospital's Medicaid recipient diagnosis-related group (DRG) volume already adjudicated for claims with admission dates of July 1, 2005 through June 30, 2006.

(2)(a) Increase each DRG relative weight by seventeen (17) percent subject to the availability of funds.

(b) The DRG relative weight increase established in paragraph (a) of this subsection shall be a continuation of the relative weight increase which expired at close of business June 30, 2005 established in 907 KAR 3.180E submitted to the Legislative Research Commission on May 4, 2006 and shall not be an additional increase.

(3) Reimburse two (2) lump sum payments to an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, in-state long-term acute care hospital, or an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated.

(a) One (1) lump sum payment referenced in subsection (3) of this Section shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2005 through June 30, 2006.

(b) One (1) lump sum payment referenced in subsection (3) of this Section shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2006 through June 30, 2007.

(4) Reimburse two (2) lump sum payments to an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated.
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

(a) One (1) lump sum payment referenced in subsection (4) of this Section shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2005 through June 30, 2006.

(b) One (1) lump sum payment referenced in subsection (4) of this Section shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2006 through June 30, 2007.

GLENN JENNINGS, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 26, 2006
FILED WITH LRC: October 31, 2006 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 8 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, in accordance with 2005 Ky. Acts ch. 252, Part I, H.3.b.23, special reimbursement for an In-state Inpatient acute care hospital, an In-state freestanding psychiatric hospital, an In-state freestanding rehabilitation hospital, an In-state long-term acute care hospital, and an In-state state-designated rehabilitation teaching hospital that is not state-owned or operated. The special reimbursement encompasses an increase to diagnosis-related group (DRG) relative weights as well as lump sum payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part I, H.3.b.23.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the content of 2006 Ky. Acts ch. 252, Part I, H.3.b.23 by establishing inpatient hospital lump sum payments, including lump sum payments to an in-state inpatient acute care hospital, an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an In-state state-designated rehabilitation teaching hospital that is not state-owned or operated. Additionally, it establishes an increase in DRG relative weights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists in the effective administration of 2006 Ky. Acts ch. 252, Part I, H.3.b.23 by establishing inpatient hospital lump sum payments, including lump sum payments to an in-state inpatient acute care hospital, an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an In-state state-designated rehabilitation teaching hospital that is not state-owned or operated. Additionally, it establishes an increase in DRG relative weights.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statute: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 65 acute-care hospitals, approximately 10 freestanding psychiatric hospitals, 5 freestanding rehabilitation hospitals, and 5 long-term acute-care hospitals, and 1 state-designated rehabilitation teaching hospital that is not state-owned or operated will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, as a result of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, 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) anticipates the administrative regulation will cost approximately $340 million ($23.8 million federal funds; $10.2 million state funds) for Fiscal Year (SFY) 2006.

(b) On a continuing basis: DMS anticipates the administrative regulation will cost approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing costs beyond SFY 2007 are anticipated.

(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 as well as Medical Assistance Revolving Trust Funds in accordance with 2005 Ky. Acts ch. 173 and HB 380 2006 GA will be used to fund 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: Federal funds authorized under the Social Security Act, Title XIX as well as Medical Assistance Revolving Trust Funds in accordance with 2006 Ky. Acts ch. 252, Part I, H.3.b.23 will be used to fund this administrative regulation.

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

(9) Tiering: Is tiering applied? This administrative regulation establishes, in accordance with 2006 Ky. Acts ch. 252, Part I, H.3.b.23, a special reimbursement increase for an In-state Inpatient acute care hospital, an In-state freestanding psychiatric hospital, an In-state freestanding rehabilitation hospital, an In-state long-term acute care hospital, and an In-state state-designated rehabilitation teaching hospital that is not state-owned or operated. The reimbursement increase encompasses an increase to DRG relative weights as well as lump sum payments. Out-of-state Inpatient hospitals are not included in the legislative mandates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect Medicaid recipients in need of Inpatient hospital services and providers.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. Additionally, this administrative regulation and amended after comments regulation comply with 2006 Ky. Acts ch. - 1506 -
252, Part L, H.3b.23 by increasing inpatient hospital service reimbursement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The DMS anticipates the administrative regulation will cost DMS approximately $34.0 million ($23.8 million federal funds; $10.2 million state funds) for State Fiscal Year (SFY) 2006.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates the administrative regulation will cost DMS approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing effect beyond SFY 2007 is anticipated.
   (c) How much will it cost to administer this program for the first year? DMS anticipates the administrative regulation will cost DMS approximately $34.0 million ($23.8 million federal funds; $10.2 million state funds) for SFY 2006.
   (d) How much will it cost to administer this program for subsequent years? DMS anticipates the administrative regulation will cost DMS approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing effect beyond SFY 2007 is anticipated.

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

Revenues (+/–):
Expenditures (+/–):
Other Explanation:

STATEMENT OF EMERGENCY
908 KAR 2:190E

This emergency administrative regulation is being promulgated to amend the current regulation for the Supported Living Program. The Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, is establishing the process and requirements for the application, funding, and monitoring of the supported living grants. Accordingly, failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of individuals receiving supported living grants to assist them in remaining in the community whose receipt of services may be jeopardized. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed concurrently with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division for Mental Retardation
(Emergency Amendment)

908 KAR 2:190E. Hart-supported living services.

RELATES TO: KRS 210.770-210.795
STATUTORY AUTHORITY: KRS 210.780(5)
EFFECTIVE: October 17, 2006
NECESSITY: FUNCTION, AND CONFORMITY: KRS 210.780(5) authorizes the State Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. This administrative regulation establishes the duties of the supported living council, the procedure for obtaining Hart-supported living grants, the standards to monitor the quality of service delivery [services], and the appellate procedure [for an application denial].

Section 1. Definitions. (1) "Adaptive and therapeutic equipment" means an item recommended by a physician, or therapist which promotes the recipient's independent functioning and community integration.
   (2) "Applicant" means a person who is eligible for Hart-supported living funds and submits a completed application to the regional supported living coordinator employed by the mental health and mental retardation board located in the region where the applicant chooses to reside [resides] by the deadline established in the application.
   (3) "Application" means a written request for supported living services which must be completed and submitted in accordance with Section 3 (4) of this administrative regulation to the regional Hart-supported living coordinator.
   (4) "Community resource developer" means a person who coordinates and assists a recipient to develop friendships, opportunities, networks, in the community on an individualized basis.
   (5) "Council" means State Supported Living Council as stated at KRS 210.770(7) and 210.775.
   (6) "Department" means the Department for Mental Health and Mental Retardation Services.
   (7) "Duplicate service" is a support or service received through the Hart-Supported Living Program which an individual is entitled to receive from another agency or program.
   (8) "Eligibility for services" means as stated at KRS 210.790(1).
   (9) "Hart-supported living" is defined at KRS 210.770(5) and (6).
   (10) "Hart-supported living grant" means an award of funds for a fiscal year to an applicant.
   (11) [6] "Home modifications" means an architectural change, ramp, widening of doors, or other adaptation [adaptation] which need to be made to the recipient's place of residence to accommodate that person's disability.
   (12) [6] "Homemaker services" means cooking, cleaning, shopping, laundry, housekeeping, and practical assistance in maintaining the recipient's [recipient's] household.
   (13) [7] "Impairment" means as stated at KRS 210.770(1) and (3).
   (14) "One-time support" means a nonrenewable grant for start-up costs, home modifications, assistive technology, or other support awarded for no longer than one fiscal year.
   (15) "Ongoing supports" means a renewable grant for supports or services which will likely be required on a continuing basis.
   (16) "Nomination-organization" means one (1) of the organizations specified in KRS 210.775.
   (17) [49] "Personal care services" means assistance with feeding, bathing, dressing, transferring, tuming, repositioning, activities of daily living, and if necessary, ambulation and emergency procedures.
   (17) [49] "Recipient" means a person who has applied and been approved for a supported living grant [funds] by a Regional Supported Living Council.
   (18) [44] "Regional supported living coordinator" means a person who is responsible for fiscal and programmatic oversight of supported living funds and plans.
   (19) [12] "Regional Supported Living Council" means as stated at KRS 210.770(9) and 210.785.
   (20) [13] "Request for reconsideration" means the process to be followed if a recipient disagrees with a decision made by the regional supported living coordinator, review team, or council [regarding a request for a supported living plan amendment].
   (21) [14] "Start-up grants" means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture, home furnishings, or equipment.
   (22) [15] "State Supported Living Council" means as stated at KRS 210.770(7) and 210.776.
   (16) "Substantial limitation of a major life activity" means as
stated at KRS 210.770(4).

(23) [(17) "Supported-living"—means—as—stated—at—KRS
210.770(5) and (6).

(16) "Supported-living-community-resource-developer"—means
a person who coordinates and assists a recipient to develop,
friendships, opportunities, networks, in the community on an individualized
basis.

(19) "Supported-living-grant"—means—an-award-of-funds-other
than-start-up-grants-by-a-Regional-Supported-Living-Council-to-an
applicant.

(26)] (28) "Supported living plan" means the document developed
between the regional Hart-supported living coordinator and the
recipient to account for the services to be provided and funds
awarded as a Hart-supported living grant.

(24) [(24)] "Supported living plan amendment" means a written,
documented change in a supported living plan in the same fiscal
year.

(25) [(25)] "Transportation" means a service or mileage reim-
bruirement for a person or provider who transports the recipient to
work or community activities.

Section 2. State Supported Living Council Operating Pro-
cedures. (1) A State Supported Living Council member shall:
(a) Adhere to applicable laws and regulations concerning confi-
dentiality;
(b) Disclose any relationship to any person receiving Hart-
supported living services, including themselves; and
(c) Adhere to the bylaws. If a member fails to act in accordance
with the bylaws, the Chair of the State Supported Living Council
shall recommend the dismissal of that member to the governor.

(2) A State Supported Living Council member shall not:
(a) Influence, discuss, deliberate, or vote on a decision if the
member has a conflict of interest that is:
1. Personal;
2. Professional; or
3. Financial;
(b) Be physically present in a meeting or portion of a meeting
in which a conflict of interest exists [the matter is discussed or
voted on];
(c) Assist another Individual, regardless of where the person
resides, to complete an application for supported living services,
except as provided in subsection (3) of this section.

(3) A State Supported Living Council member may assist in
the completion of an application for Hart-supported living services
for himself, if eligible, or an eligible family member.

Section 3. [Regional-Supported-Living-Council-Operating-Pro-
cedures.

(2) A Regional Supported Living Council member shall:
(a) Adhere to the bylaws. If a member fails to act in ac-
cordance with the bylaws, the Chair of the Regional Support-
ning Council shall recommend the dismissal of that member to the
State Supported Living Council;
(b) Adhere to applicable laws and administrative regulations
concerning confidentiality;
(c) Comply with the evaluation criteria as established by the
State Supported Living Council and the Department for Mental
Health and Mental Retardation Services for a given fiscal year;
(d) Award every recipient an opportunity for personal interaction
with the Council.

(2) A Regional Supported Living Council member shall not:
(a) Influence, discuss, deliberate, or vote on a decision if the
member has a conflict of interest that is:
1. Personal;
2. Professional; or
3. Financial;
(b) Be physically present in a meeting in which the matter is
discussed or voted on;
(c) Assist another Individual, regardless of where the person
resides, to complete an application for supported living services, ex-
cept as provided in subsection (3) of this section.

(3) A Regional Supported Living Council member may assist in
the completion of an application for supported living services for
himself, if eligible, or an eligible family member.

Section 4. Applicant Responsibilities. (1) The applicant shall submit
a completed application to the regional Hart-supported living coordi-
nator where the applicant chooses [where] to reside.

(a) On the current Hart-supported living application with all
required sections completed; and
(b) By the annual deadline
(c) Name;
(d) Address;
(e) Telephone number;
(f) Social Security number;
(g) Disability;
(h) Type of service or support requested;
(i) Proposed budget;
(j) A Hart-supported living grant shall not be funded [used] for:
(a) On-going rent or mortgage payments;
(b) Payment of a medical insurance premium or unpaid medical
bill;
(c) Supplementation of wages for staff in other publicly-funded
programs;
(d) Modifications costing over $3,500 ($2,500) to rental prop-
erty;
(e) A home improvement not related to a person's disability;
(f) Rental of a vehicle for more than thirty (30) days in a fiscal
year;
(g) Purchase of a vehicle;
(h) Supports or services for individuals in living arrangements
that include more than three (3) people who are eligible for Hart-
supported living unless all are related legally or biologically as a
family unit;
(i) Equipment or service which is obtainable from another pro-
gram for which the applicant qualifies;
(j) Tuition, transportation costs, or fees for a program or activity
lasting more than thirty (30) days if during that fiscal year a majority
of participants are individuals with disabilities as defined by the
Americans with Disabilities Act (ADA) of 1990, [eligible to apply for
supported living];
(k) Support or service which is duplicative of a support or ser-
vice which is obtainable from another program for which the indi-
vidual qualifies; or
(l) Furniture or home furnishings not related to a start-up grant
or a person's disability.

Section 5. Application Evaluation Criteria. (1) The follow-
ing criteria shall be used by the review team [Regional-Supported-Living
Council] to recommend funding for [award] a Hart-supported
living grant:
(1) [Eligibility.
(a) An applicant shall be disabled and:
(1) Be a resident of Kentucky; or
2. Have a family member or guardian who is a resident of Kentucky;
(b) An applicant may be living
(1) Independently;
(2) With a family member or guardian;
(3) In a congregate setting, with a plan to live in the community
if funding is received.
(2) Preference for the provision of services to those who have
little or no family or guardianship support;
(3) Preference for the provision of services to those who are
younger at the time of application;
(4) Preference for the provision of services to those who have
been identified as being at risk for institutionalization;
(5) Preference for the provision of services to those who have
been refused support by another service agency;
(6) Preference for the provision of services to those who have
been denied services because of funding limitations;
(7) Preference for the provision of services to those who have
been delayed in obtaining services due to the availability of funds;
(8) Preference for the provision of services to those who are
from low-income families;
(9) Preference for the provision of services to those who are
from minority groups;
(10) Preference for the provision of services to those who are
from rural areas;
(11) Preference for the provision of services to those who are
from low-income areas;
(12) Preference for the provision of services to those who are
from low-income families; and
(13) Preference for the provision of services to those who are
from minority groups.
specific needs of the individual;
(b) Whether the ability of the applicant [person will be able] to exercise [exercised] choice and autonomy in the supported living arrangement;
(c) The involvement of the name by which the housing arrangement will be made;
(d) Whether there will be people, in addition to the applicant [individual] and paid staff, who are committed to supporting the arrangement [over time]; and
(c) Opportunities for the applicant to be present and participate in family and community activities. [1)
(e) Whether the quality of life for the person with a disability will be improved, if the grant is funded;
(f) Potential for success shall be weighed at twenty-four percent of the total score in the decision to award a grant.
The following shall be taken into consideration:
(a) Whether the applicant has clearly indicated the reason for requesting funds and what he will do if granted the funds;
(b) Whether the applicant has identified a place to live; and
(c) Additional resources available to the applicant have been identified that may include [person, including):
1. Family;
2. [A] Friend; or
3. Another service provider who can support the situation.
(d) The application indicates that the applicant is planning for his future;
(e) Need shall be weighed at eighteen percent of the total score in the decision to award a grant. The following shall be taken into consideration:
(a) Services have been designed around the specific needs of the applicant [whether the applicant shows that the person is planning ahead for his future];
(b) Whether the applicant or his family is experiencing a crisis situation; and
(c) Whether the applicant's multiple disabilities create barriers to developing and sustaining supports [over time].
(f) Accountability shall be weighed at twelve percent of the total score in the decision to award a grant. The following shall be taken into consideration:
(a) Whether the applicant has identified a prospective [wiable] service provider;
(b) Whether the capability of the applicant, and the people supporting the applicant, to manage [applicants' family seem capable of managing] the resources and arrange [arranging] for the requested services; and
(c) Whether the applicant has demonstrated a reasonable effort to secure funds from other sources, if appropriate.; and
(d) Whether the request is reasonable.
(g) Overall purpose [quality] of the application. [shall be weighed at ten percent of the total score in the decision to award a grant. The following shall be taken into consideration;
(a) Whether the supported living resources will be used to provide and improve a positive quality of life for the applicant [disabled person and family];
(b) Whether the supported living resources will simply maintain the isolation and dependency of the person and his family.]

Section 6. Funding Recommendations. (1) A review team shall:
(a) Evaluate applications in accordance with the criteria in Section 5 of this administrative regulation;
(b) Make funding recommendations for each fiscal year, not to exceed regional allocations; and
(c) Review requests for plan amendments.
(2) Funding recommendations shall be made in the following order:
(a) Current recipients requesting the same amount or less for on-going support;
(b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:
1. An increase in the pay rate of a provider for services currently in the plan;
2. An increase in employer taxes for services currently in the plan;
3. An increase in worker's compensation rates; or
4. Payment to a provider to compute required employer taxes and withholdings;
(c) Applicants denied funding from the previous fiscal year and approved for funding by the reconsideration or administrative hearing process as outlined in Sections 11 and 12 of this administrative regulation;
(d) New applicants and current recipients requesting additions to their plans;
(2) A review team shall not include:
(a) The regional coordinator representing an applicant or
(b) An employee of a supported living contracted agency for the applicant's choice of residence.
Section 7. [6] Recipient Responsibilities. (1) A recipient of a supported living grant shall:
(a) Participate in the development of a supported living plan [an roadway] with the Hart-supported living coordinator;
(b) Agree to the supported living plan and request a plan amendment for a desired change; and
(c) Negotiate the services to be provided by:
1. A service providing agency; or
2. An individual who provides services, as an employee or independent contractor.
(2) A recipient of a Hart-supported living grant who is an employer shall:
(a) Be responsible for the computation, payment, and reporting of [required] employee payroll, withholdings, workers' compensation, unemployment [and actual payment of required withholdings, and taxes; [and disbursements appropriate to being an employer];
(b) Establish terms of employment for an employee, to include time, duties and responsibilities. This shall be in the form of a signed agreement [between the recipient and the employer];
(c) Establish terms for an independent contractor to include services to be provided and compensation. This shall be in the form of a signed agreement [between the recipient and the independent contractor].
(3) A recipient of a Hart-supported living grant shall not sell or donate equipment or another item purchased with supported living funds without the written consent of the council.
(4) A recipient of a Hart-supported living grant shall comply with standards as set forth in KRS 210.795.
(5) A recipient shall immediately notify the regional coordinator upon the receipt of additional supports or services;
(6) A recipient shall be responsible for submitting documentation that a support or service, approved on a plan, has been provided when requesting payment;
(7) A recipient of an ongoing grant shall submit a request for continued or increased funding by April 1 for funding for the fiscal year beginning July 1.

Section 8. Reduction of a Hart-supported Living Grant. (1) The grant shall be reduced by any amount received for a service which duplicates a support or service on the supported living plan;
(2) The grant shall be reduced if
(a) The support does not comply with the principles and definition of the Hart-supported living program in KRS 210.770(6) and
(b) 210.795; or
(b) The recipient no longer needs a support or service in whole or in part.; or
(c) Not sell equipment or another item purchased with supported living funds without written consent of regional council.
(4) Comply with standards as set forth in KRS 210.795.

Section 9. [7] Termination of a Hart-supported Living Grant. A Hart-supported living grant shall be terminated if the recipient:
(1) Does not use the funds in accordance with the principles and definition of supported living in KRS 210.770, 210.795, and
(6) this administrative regulation;
(2) Does not comply with employer responsibilities if applicable;
(3) Takes up residence outside of Kentucky; or
(4) Requests termination of the Hart-supported living grant.
(5) Des.

[Section 8. Reconsideration Process for Supported Living Plan or Plan Amendments. (a) A recipient who disagrees with a decision by the regional supported living coordinator or Regional Supported Living Council regarding a supported living plan or plan amendment may request reconsideration, in writing or alternative format, within thirty (30) days following the notification by the regional supported living coordinator of the Regional Supported Living Council’s decision.

(b) A request for reconsideration shall:

(i) Be submitted to the regional supported living coordinator for review by the Regional Supported Living Council; and

(ii) Contain the following information:

1. Name;
2. Address;
3. Telephone number;
4. A decision to be reconsidered;
5. A reason for a decision to be reconsidered;
6. Documentation supporting request for reconsideration;
7. Signature of person requesting reconsideration.

(c) The request for reconsideration shall be reviewed by the Regional Supported Living Council. The council shall issue a written or alternative format response to the recipient no later than seven (7) working days after a decision has been made.

(d) The recipient may request a reconsideration by the State Supported Living Council if the Regional Supported Living Council’s decision does not satisfy the recipient concerning a supported living plan or plan amendment.

(ii) A request for reconsideration shall:

1. Be submitted to the regional supported living coordinator for review by the State Supported Living Council; and
2. Contain the same information required in subsection (2)(b) of this section.

(iii) The request for reconsideration and supporting documentation shall be reviewed by the State Supported Living Council.

(5) Reconsideration shall include:

1. Three (3) members of the State Supported Living Council, one (1) of whom shall be the chairman or his designee;
2. Two (2) members of the Regional Supported Living Council, one (1) of whom shall be the chairman or his designee;
3. The State Supported Living Council shall issue a written response to the recipient and the Regional Supported Living Council shall notify the recipient of the decision and an explanation for the decision within thirty (30) days.
4. If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.

Section 10. [9] Non-funded Supported Living Applications. (1) Applications that will exceed the regional allocation of supported living funds shall not be approved unless funding for that application becomes available within the fiscal year for which the application was made.

(2) The council may recommend funding for an application when it is determined through the reconsideration process that the review team did not comply with Sections 5 and 6 of this administrative regulation.

Section 11. Reconsideration Process. (1) A recipient or applicant who disagrees with a decision by the Regional Supported Living Coordinator or review team may request reconsideration. In writing or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the decision. Reconsideration may be requested regarding:

(a) A supported living plan;
(b) A plan amendment;
(c) The reduction of a grant;
(d) The termination of a grant; or
(e) A non-funded application.

(2) A request for reconsideration shall:

(a) Be submitted to the regional supported living coordinator for review by the council; and
(b) Contain the following information:

1. Name;
2. Address;
3. Telephone number;
4. A decision to be reconsidered;
5. A reason for a decision to be reconsidered;
6. Documentation supporting request for reconsideration; and
7. Signature of person requesting reconsideration.

(3) A meeting for reconsideration shall be scheduled and include:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or his designee;
(b) The recipient or his designee;
(c) One (1) member of the review team; and
(d) The regional supported living coordinator.

(4) The meeting for reconsideration shall be conducted at a time and place convenient to the parties and may be conducted in person, by videoconference, or by telephone conference.

(5) The council shall make the final decision and issue a written response to the recipient with an explanation for the decision within thirty (30) days.

(6) If a recipient or applicant disagrees with the determination made by the council, the recipient may request an administrative hearing.

(7) No currently funded recipient shall have his grant reduced or terminated to fund a plan or grant approved through the reconsideration process. [A person applying for supported living services who has not been funded may appeal the decision based upon the Regional Supported Living Council’s failing to comply with Section 3(1)(c) through (4) of this administrative regulation.] (2) An administrative hearing shall be requested no later than thirty (30) days after notification that the application was not funded.

Section 12. [10.] Request for Administrative Hearing. (1) An applicant or recipient who disagrees with the reconsideration decision (the following person) may request an administrative hearing within thirty (30) days of receipt of notification:

[a] A recipient of services who disagrees with the determination for reconsideration made by the State Supported Living Council; and
[b] A person who did not receive funding based on the criteria in Section 8 of this administrative regulation.

(2) The applicant or recipient requesting an administrative hearing shall submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, [4E-4] Franklin, Kentucky 40621; and

(3) Include with the request the same information required in Section 11(7)(b)(6) of this administrative regulation.

(3) The administrative hearing shall be in accordance with KRS Chapter 13B.

Section 13. [11.] Regional Supported Living Coordinator Responsibilities. The regional supported living coordinator shall:

(a) Participate as required in review team responsibilities as outlined in Section 6(1) of this administrative regulation; [Provide support to the regional council, including:

1. Making meeting arrangements;
2. Sending notices and agendas to members;
3. Providing budgetary information to members for funding decisions;
4. Arranging member expense reimbursement, and
5. Maintaining:
   1. A financial account of expenditures, and
   2. Minutes from the meetings.]

(b) Disseminate applications for the Hart-supported Living Program which include the evaluation criteria, by which the appli-
Sections shall be reviewed.
(3) Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant's behalf; [c]
(4) Receive supported living applications, document date received and send notice of receipt of application; [and maintain a database of funded applicants.]
(5) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6).
(6) Maintain a database of expenditures and activities of un-funded applicants and funded recipients for each fiscal year. Criteria for the database information shall be established by the council and the department. [to include:
(a) Name;
(b) Address;
(c) Phone number;
(d) County;
(e) Service requested; and
(f) Amount of funding requested.
(6) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(6) and (6).]
(7) Notify all applicants of the status of their applications within fifteen (15) days of the completion of the initial funding recommendations, but no later than June 15 of each fiscal year.
(8) Upon recommendation for funding [by the regional council], monitor the recipient to finalize a supported living plan within thirty (30) days of the recommendation [for funding]. Initial plans shall follow the funding recommendations and be specific to approved services.
(9) Educate the recipient on their responsibilities as outlined in Section 7 of this administrative regulation.
(10) Arrange for payments for currently funded [6]. Provide information concerning record keeping, taxes, worker's compensation, and unemployment insurance; responsibilities of the recipient have related to the supported living plan.
(9) Maintain supported living plans that include [which are currently funded, including):
(a) Receiving [the receipt of bills or other documentation that a service has been provided];
(b) Verifying the service as a part of the established [Checking against the plan];
(c) Approving [or] payment; and
(d) Keeping a record of payment.
(11) [14c] Arrange for billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient.
(12) Monitor to ensure compliance with regulations and the successful implementation of plans. Monitors shall be by home visit or site visit where the services are received with home modifications requiring a home visit. Monitoring reports shall be completed for each recipient as follows:
(a) One (1) time services received by a recipient within three (3) months of completion of the service.
(b) Ongoing services received by a recipient within the first three (3) months from the initiation of the supported living plan and annually thereafter.
(c) Reports of monitoring visits shall be documented in a manner and format approved by the council and
(d) Monitoring reports shall be a permanent part of the recipient's record.
(13) [and follow up] either by visit or telephone, within ninety (90) days, to determine if the vendor delivered the service or equipment.
(14) Attend trainings and meetings as required by the council and
(15) [for regional supported living coordinators.]
(16) Submit database information as outlined in this section [quarterly report to the Division of Mental Retardation Services [regarding expenditures and activities

Section 14. [12.] Contract Agency Responsibilities. The contract agency for supported living funds shall:
(1) Implement the Hart-supported living program in accordance with KRS 210.770, 210.780, and 210.785.
(2) Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary [administrative support] personnel within the contract agency office.
(4) [Provide liability insurance for the Regional Supported Living Council.]
(5) Establish a cost center and record staff costs for administering the Hart-supported Living Program [working with the regional council, applicants, recipients, and administrative duties].
(6) Establish a budget with the Regional Supported Living Council for council expenses on a fiscal year basis.
(7) Maintain files and records that include [including]:
(a) Applications;
(b) Requests for continued funding;
(c) Applicants that were not funded for seven (7) years after the fiscal year in which application was not funded;
(d) Recipients having funding terminated for seven (7) years or for seven (7) years past majority;
(e) Currently-funded recipients;
(f) Recipient plans;
(g) Amendments to plans;
(h) Financial records; and
(i) Recipient monitoring [quarterly] reports.

Section 15. [14.] Department [for Mental Health and Mental Retardation Services] Responsibilities. The Department [for Mental Health and Mental Retardation Services] shall:
(1) In cooperation with the [State-Supported Living] council, establish timelines, budgets, and priorities for supported living funds;
(2) Maintain aggregate financial and programmatic data;
(3) Advocate for program expansion; [c]
(4) Provide staff support, technical assistance, and training for the Hart-supported Living Program; and
(5) Provide monitoring of the Hart-supported Living Program.
(6) Regularly inform the nominating organizations per KRS 210.775(2)(b) and 210.785 of their responsibility to solicit nominations for both the State and Regional Supported Living Councils.

Section 14. Nominating Organizations' Responsibilities. Nominating organizations shall:
(1) Solicit nominations of qualified nominees for their designated category to serve on both the State and Regional Supported Living Councils in accordance with KRS 210.775.
(2) Submit the biography form to the Director, Division of Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, [4E/5] Franklin, Kentucky 40621.]

Section 15. [15.] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Hart-Supported Living Grant Application", July 2006 edition;
(b) "Request for Renewal", July 2006 edition, ["Kentucky-Supported Living Application", (106th Edition), Department for Mental Health and Mental Retardation Services, incorporated by reference.]
(2) This material [it] may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, Division of Mental Retardation Services, 100 Fair Oaks Lane, [4E/5] Franklin, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

JOHN M. BURT, Ed.D., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 9, 2006
FILED WITH LRC: October 17, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Vondah Vanderhorst

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines the process for application, funding recommendations and monitoring of the State Supported Living Program.
(b) The necessity of this administrative regulation: The necessity is to carry out the purposes of KRS 210.770 to 210.795.
(c) How this administrative regulation conforms to the content of the enabling statute: This administrative regulation defines the eligibility and application process for State Supported Living Grants. Further, this regulation defines the responsibilities and duties mandated by KRS 210.780.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This is addressed in the response provided in 1(a)-(c).
(2) If 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 Regional Planning Council was dissolved by statute during the 2006 legislative session.
(b) The necessity of the amendment to this administrative regulation: The necessity is to conform to the statutory changes to the supported living program during the 2006 legislative session.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation defines the process for application, funding recommendations and monitoring of the State Supported Living Program.
(d) How the amendment will assist in the effective administration of the statute: This is addressed in the responses provided in 1(a)-(c).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
- Individuals with disabilities as defined by the Americans with Disabilities Act, as they would be eligible to apply for the grants outlined in this administrative regulation.
- Service providers and coordinators to provide their responsibilities and accountability. Service providers shall include the 14 community mental health/mental retardation boards.
- The Department for Mental Health and Mental Retardation Services outlining the duties and responsibilities of oversight for the program and funds.
- State Supported Living Council.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An extra step, in accessing grants for eligible citizens, has been eliminated by statute by the dissolution of the Regional Supported Living Councils.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred for the entities identified in (d) for the amendments to the administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The citizens are eligible for services may apply for grants to receive funding for services or items to assist them in remaining in their homes in the community.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds allocating during the 2006 legislative session.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: Nonapplicable to this program.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Nonapplicable to this program.
(9) TIERING: Is tiering applied? No tiering is applied to this administrative regulation. Eligible applicants and recipients are equally regulated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is none applicable to this regulation.
2. State compliance standards. KRS 210.770 to 795.
3. Minimum or uniform standards contained in the federal mandate. This is not applicable to this regulation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose any stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not applicable to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact:
   (a) Service providers and coordinators and their responsibilities and accountability. Service providers shall include the fourteen (14) Community Mental Health/Mental Retardation Boards.
   (b) The Department of Mental Health and Mental Retardation Services outlining the duties and responsibilities of oversight for the program and funding.
   (c) State Supported Living Council.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.770 to 210.795 authorizes the action taken by this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the next full year the administrative regulation will be in effect. This amendment will not generate any revenue for the first year.
5. How much will it cost to administer this program for the first year? State general funds, in the amount of $6,195,500, have been budgeted for the fiscal year 2007. It is anticipated that it will cost $6,195,500 to administer this program in the first year of the biennium.
6. How much will it cost to administer this program for subsequent years? State general funds, in the amount of $7,195,500, have been budgeted for the fiscal year 2007. It is anticipated that it will cost $7,195,500 to administer this program in the first year of the biennium.
7. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
- Expenditures (+/-):
  Other Explanation:
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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2006)

16 KAR 7:020. Kentucky Principal Internship [Intern] Program.
RELATES TO: KRS 161.020, 161.027, 161.028
STATUTORY AUTHORITY: KRS 161.027, 161.028
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.027 requires a certificate of legal qualifications [credentials] for each public school position for which a certificate is issued. KRS 161.027 requires that an applicant for certification as school principal with less than 12 years of experience shall have completed a minimum of two years of successful [principal] experience as a certified principal in a Kentucky public school or a nonpublic school which meets the state performance standards as established in KRS 158.160 or which has been accredited by a regional or national accrediting agency. The two [2] years of experience shall have been within the previous 10 years of the most recent application for principal certification and shall be confirmed by the school official responsible for the applicant during the time of employment as a school principal.

Section 1. An applicant for principal certification requesting exemption from the Kentucky Principal Internship [Intern] Program as allowed by KRS 161.027 shall [be required to submit to the Education Professional Standards Board proof of the following]

(1) (a) A minimum of two [2] years successful [principal] experience serving as a certified principal in a Kentucky public school or a nonpublic school which meets the state performance standards as established in KRS 158.160 or which has been accredited by a regional or national accrediting agency. The two [2] years of experience shall have been within the previous 10 years prior to the most recent application for principal certification.

Section 2. (1) An applicant shall be eligible to participate in the Kentucky Principal Internship Program established in this administrative regulation, if the applicant:

(a) Has successfully completed all prerequisites to certification specified by KRS 161.027 and KAR Title 16; and

(b) Has been issued either a statement of eligibility, a temporary provisional certificate, or a temporary certificate by the Education Professional Standards Board [who has successfully completed all prerequisites to certification specified by KRS 161.027 and KAR Title 16 and who has been issued either a statement of eligibility, a temporary provisional certificate, or a temporary certificate by the Education Professional Standards Board] [Kentucky Department of Education] [shall be eligible to participate in the Kentucky Principal Internship [Intern] Program specified by this administrative regulation.]

(2) The principal internship specified by KRS 161.027 shall take place when a person holding either a valid statement of eligibility, temporary provisional certificate, or temporary certificate is employed as a principal or full-time assistant principal in a public school or a nonpublic school which meets the state performance standards as established in KRS 158.160 or [shall] is accredited by a regional or national accrediting agency.

Section 3. (1) The purposes of the Kentucky Principal Internship [Intern] Program shall be:

(a) To provide beginning principals with the opportunity for learning under the supervision of experienced educators; and

(b) To provide continuing certification upon the demonstration of the principal intern's ability to meet the administrator standards developed by the Interstate School Leadership Licensure Consortium (ISLSC) established in Section 4(1) of this administrative regulation.

(2) These purposes shall be accomplished through the Kentucky principal internship [Intern] committee which shall be assigned to supervise, assist, and assess the principal intern.

Section 4. (1) The administrator standards used in the assessment of the principal intern shall be as follows:

(a) A school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

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

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

(d) A school administrator is an educational leader who promotes the success of all students by working collaboratively with families and community members, responding to diverse community interests, and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who promotes the success of all students by exercising integrity, fairness, and in an ethical manner; and

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

(2) The intern shall demonstrate to the principal internship [Intern] committee the ability to meet the administrator standards through observations of performance and the preparation of a portfolio.

(3) The required entries in the portfolio shall be documentation which illustrates each of the administrator standards and the Kentucky Principal Internship [Intern] Program professional growth targets.

Section 5. (1) Members of the principal internship [Intern] committee shall include a principal mentor, employing school district superintendent or designee, and an administrator educator.

(3) An [Any] individual selected to serve as a principal mentor shall [must] have a minimum of three [3] years of experience serving as a principal while holding a valid Professional Certificate for Instructional Leadership-School Principal. The three [3] years of principal experience shall have been within five [5] years of appointment to the principal internship committee. Preference in selection shall be given to the following criteria in the order stated:

(a) A currently-employed principal within the [employing district but outside the] intern's school;

(b) A currently-employed principal within the employing school district;

(c) A currently-employed principal in a nearby school district;

(d) A recently-retired [successful principal]; or

(e) If the district is unable to identify a principal mentor in accordance with the hierarchy established in subsection (3) of this section, the district shall request that the Education Professional Standards Board assist in the identification of a principal mentor.

(5) (3) Selection of a principal mentor from another school district shall be subject to the approval of the superintendent of the proposed principal mentor. An assistant principal shall not serve in...
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this capacity. If a principal mentor is not available through these options, a qualified person shall be identified by the Education Professional Standards Board [Kentucky Department of Education].}

Section 9. The superintendent of the employing school district shall provide an orientation meeting for each principal intern to clearly inform the intern of the requirements of the program. At that time, or as soon as possible thereafter, the principal intern shall be provided the names of the members of the principal internship [intern] committee.

Section 10. (4) The employing school district shall provide the Education Professional Standards Board with the following information related to each principal mentor: (a) the name of the principal mentor; (b) the name of the principal's immediate supervisor or designee; (c) the number of instructional days the principal was employed; and (d) the number of instructional days the principal was employed as a principal or assistant principal.

Section 11. (1) The superintendent of the local school district employing the principal intern shall schedule a meeting of the members of the principal internship [intern] committee to be held not later than fifteen (15) days following appointment of all committee members. At that time, the committee shall meet with the principal intern to clarify roles, procedures and expectations. The committee shall also select a chairperson who shall be responsible for scheduling all future visits and conferences and for completing of required reports.

The principal mentor shall spend a minimum of fifty (50) hours outside of scheduled school hours with the principal intern. The number of hours spent with the intern and the administrator standards and performance indicators addressed shall be reported to the principal internship [intern] committee at each meeting, and a final report of the total number of hours shall be made in writing by the committee to the superintendent of the local school district employing the principal intern. A copy of the committee's report confirming the number of hours spent by the principal mentor shall be submitted to the Education Professional Standards Board [Kentucky Department of Education] by the local school district in applying for reimbursement of funds as specified in Section 13(1) of this administrative regulation.

Each committee member shall make a minimum of three (3) performance observations of the principal intern and conduct a review as described in subsection (4) of this section of the principal internship portfolio. Each observation shall be a minimum of three (3) hours in duration. Following each sequence of performance observations and portfolio review, all committee members shall meet to discuss observed performance and the portfolio. A conference shall then be held with the principal intern by committee members to provide information on the skill level as determined by the administrative standard demonstrated and suggestions for professional growth.

The committee shall follow these guidelines for scheduling a sequence of observations, portfolio review, meetings, and conferences:

(1) The sequence shall be conducted on days that are included in the intern's term of employment.

(2) There shall be a minimum of thirty (30) work days between each formal sequence.

(3) Upon receipt of the Confirmation of Employment [confirmation of employment], the Education Professional Standards Board [Kentucky Department of Education] shall appoint the administrator to the principal internship [intern] committee.

(4) The final meeting of the principal internship [intern] committee shall include a decision reached by a majority vote regarding completion of the internship.

Section 12. (1) In arriving at a professional judgment of the completion of the internship, the committee shall consider the progress of the principal intern throughout the entire internship [school year], with particular emphasis on the progress demonstrated dur-
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...ing the final months of the internship.

(2) At the completion of the internship experience, the chairperson shall report to the Education Professional Standards Board [Kentucky Department of Education] and to the superintendent of the employing local school district, if the superintendent is not a member of the committee, the committee's decision regarding the principal intern's completion of the internship [intern-program].

(3) If a principal intern's performance is judged by the internship [intern] committee to be unsatisfactory, the principal intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. If the principal intern is not subsequently released from the internship during the period of validity of the statement of eligibility, the principal intern shall qualify for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.

Section 13. (1) The Education Professional Standards Board [Kentucky Department of Education] shall reimburse the school district employing the principal intern for the payment to each principal mentor of mileage expenses in accordance with 200 KAR 2 006. Contingent upon funding, the Education Professional Standards Board shall [also] provide [and fee] an amount not to exceed $1,400 ($1,000 to each principal mentor as compensation for out-of-school-time spent with the principal intern.

(2) The Education Professional Standards Board [Kentucky Department of Education] shall contract with institutions of higher education to pay an amount of $300 for each administrator educator contingent upon funding, and for mileage expenses in accordance with 200 KAR 2 006. Each institution shall make its own determination as to the frequency of disbursement [allocation] of funds received from this program.

(3) If the administrator educator member of the committee does not represent an institution of higher education, the Education Professional Standards Board [Kentucky Department of Education] shall reimburse the appropriate agency or individual for mileage expenses in accordance with 200 KAR 2 006. Contingent upon funding, the Education Professional Standards Board shall [also] provide [and fee] an amount not to exceed $300.

(4) All costs for the superintendent or designee, except travel reimbursement to attend required training, shall be the responsibility of the local school district.

(5) A payment to a member of a principal internship [intern] committee for a secondary vocational principal intern shall be administered by the Education Professional Standards Board [Kentucky Department of Education] with reimbursement through the Department of Workforce Investment Education [for Workforce Development, Department of Technical Education] Cabinet.

Section 14. Appeals. (1) If an intern is determined by the principal internship committee to have been unsuccessful, the intern may appeal to the Education Professional Standards Board within thirty (30) calendar days of the date of receipt of the notice of a finding of unsuccessful [an appeal] [A complaint] [relative to the failure of the Kentucky Principal Internship Committee] [principal internship committee] [to comply with statutory and regulatory provisions of the Kentucky Principal Internship] [Intern] Program shall be reviewed by a committee of four (4) persons appointed by the Kentucky Education Professional Standards Board

(2) The appeals [review] committee shall include one (1) principal, one (1) superintendent or designee, one (1) administrator educator, and one (1) employee of the Education Professional Standards Board who shall serve as designee of the executive director.

(3) The committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.

(4) An appeal committee member shall not take part in a decision in which the member has an interest or is biased.

(5a) The principal intern shall file the appeal within thirty (30) calendar days of the date written notice of failure of the internship is received by the principal intern by certified mail return receipt requested. If the principal intern failed [fails] to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the principal intern shall file the appeal [appeal shall be filed] within thirty-five (35) days of the date the notice is mailed to the principal intern's last known residence.

(b) Upon receipt of the appeal, the Education Professional Standards Board shall provide notice to the members of the principal internship committee. Each member may file a written response within fifteen (15) days of receipt.

(c) The appeals committee shall review the written appeal by the principal intern, all committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the principal internship committee.

(d) The appeals committee shall base its recommendation upon the following requirements:

1. Evidence of the principal intern's ability to meet the requirements of the administrator standards;

2. Appropriate documentation of fifty (50) hours outside normal working hours spent by the principal intern in assisting the principal intern;

3. Assignment of internship committee members in accordance with legal requirements;

4. Compliance with the requirements for the timing, content, reporting, and signing of principal performance records, meeting and observation forms, and principal mentor time sheets; and

5. Agreement between principal intern performance records, professional growth plans, principal mentor committee meeting records, and the final decision of the committee.

(e) The appeals committee shall forward a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.

(f) If the decision of the principal internship committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the principal intern.

(g) If the decision of the principal internship committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Principal Internship, unless:

(a) The principal intern has exhausted the two (2) year provision for participation in the Kentucky Principal Internship Program; or

(b) The period of validity of the statement of eligibility has expired.

(10) If, during the appeal process, it becomes evident that the principal internship committee has committed a [seem] procedural violation during the internship which makes it impossible to determine if the principal intern has [has-not] been unsuccessful, the Education Professional Standards Board shall [may] notify the internship and allow the principal intern to repeat the internship without penalty.

(11) If the principal intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the principal intern may request a formal hearing under the provisions of KRS Chapter 13B. The principal intern shall file the request [shall be filed] in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is received by the principal intern.

(12) In notifying the principal intern of the board's decision, the Education Professional Standards Board shall send the decision of the board to the last known address of the principal intern. If the principal intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail, the principal intern shall [file] [submit] the request for a hearing [shall be filed] in writing with the Executive Director of the Education Professional Standards Board within twenty (20) calendar days of the date the board's decision is mailed to the principal intern by certified mail.

Section 15 A principal intern who has not successfully com-
pleted the internship and has exhausted the two (2) year provision for participation in the Kentucky Principal Internship Program shall not be eligible for a Kentucky principal certificate under this admin-
istrative regulation. (Office of Teacher Education and Certification: If practical, a decision on the complaint shall be made within sixty (60) days following receipt of the complaint.)

Section 16. [16] The Kentucky Education Professional Stan-
dards Board shall collect and analyze data, on an annual or biennial basis, which permit evaluation of the Principal Internship [Inter-
tern] Program covered by this administrative regulation.

Section 17. Incorporation by Reference: (1) The following ma-
terial is incorporated by reference:
(a) "Statement of Eligibility/Confirmation of Employment" form, revised January 2006;
(b) "Assurance Agreement for an Assistant Principal Intern" form, revised April 2006;
(c) "Kentucky Principal Internship Program Observation" forms, revised April 2006;
(d) "KPIP Observation Summary" form, revised April 2006;
(e) "Professional Growth Targets", revised April 2006;
(f) "Formative Portfolio Contents Checklist Sequences I and II", revised April 2006;
(g) "Summative Portfolio Contents Checklist Sequence III", revised April 2006;
(h) "Principal Mentor Time Sheet and Travel" form, revised April 2006;
(i) "Progress Report on Principal Intern", revised April 2006;
(j) "Summative Report on Principal Intern", revised April 2006;
(k) "Committee Meeting Checklist", revised April 2006; and
(l) "Interstate School Leaders License: Standards Growth Assessment" revised April 2006.
(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, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TOM STULL, Chair
APPROVED BY AGENCY: August 21, 2006
FILED WITH LRC: September 11, 2006 at 2 p.m.
CONTACT PERSON. Alicia Sneed, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

GOVERNOR'S OFFICE
Department of Veterans Affairs
(As Amended at ARRS, November 14, 2006)

17 KAR 4:010 Veterans' Service Organization Burial Honor Guard Program.

STATUTORY AUTHORITY: KRS 40.360(9), 40.364(1).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.360(3) and 40.364(1) require the Kentucky Department of Vet-
ers Affairs to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program. This administrative regulation establishes the requirements for the Veterans' Service Organization Burial Honor Guard Program.

Section 1. Definitions. (1) "Authorized provider" means a vet-
ers' service organization or any other military or civilian organization that has been trained in rendering military funeral honors according to requirements established [standards found] in 10 U.S.C. 1491.
(2) "Eligible veteran" means a person who:
(a) [a] [Who] Has served the state and nation in the armed forces; and
(b) [b] [ii] Was discharged under other than dishonorable condi-
tions, i.e. with an honorable or general under honorable conditions service characterization; or
(c) [e][ii] At the time of death, was a member of the Selective Reserve or Kentucky National Guard;
(d) [e][ii] Was recently deceased, or, if not recently deceased, cremated remains are being interred, or, if not recently deceased, the burial honors are being rendered for historical reasons; and
(e) [e][i] Was never convicted of a federal or state capital of-
fense.
(3) "Veterans' service organization" or "VSO" means an or-
ganization serving American veterans such as Veterans of Foreign Wars, AMVETS, Disabled American Veterans, Vietnam Veterans of America, and American Legion.

Section 2. Program Responsibilities. (1) The Kentucky De-
partment of Veterans Affairs shall,
(a) Pay a stipend in the amount provided by subsection (2) of this section to the military burial honor guard detail supplied by the authorized provider for the military honors rendered by that detail; and
(b) Maintain a central repository for recording all data required by KDVA Form Veterans' Service Organization Request for Honors Stipend [04/04].
(2) The maximum amount of the stipend shall be sixty (60) dollars for each ceremony provided by the VSO. The stipend amount shall be determined as follows:
(a) For playing "Taps" on CD or other recording device, zero dollars;
(b) For having a live bugler or ceremonial bugler or ceremonial bugler play the song "Taps", instead of using a CD or other re-
corded device, ten (10) dollars;
(c) For folding and presenting the United States Flag with the song "Taps":
1. Played on CD, twenty-five (25) dollars; or
2. Performed by a live bugler or ceremonial bugler, $35; or
(d) For folding and presenting the United States Flag with a rifle team, with a minimum of three (3) firearms, with the song "Taps";
1. Played on CD or other pre-recorded device, fifty (50) dollars; or
2. Performed by a live bugler or ceremonial bugler, sixty (60) dollars.
(3) Authorized providers shall,
(a) Render military burial honors in accordance with the re-
quirements established [standards found] in 10 U.S.C. 1491;
(b) Require a flag folding ceremony as part of the military burial honors in which the United States flag is folded by the military burial honor guard;
(c) Ensure that the folded flag is presented during the cere-
domy to the deceased's next of kin or family representative by a mem-
ber of the eligible veteran's own military service (USMC, USA, USAF, USN, U.S.C.G); and
(d) After each rendering of military burial honors, provide the Kentucky Department of Veterans Affairs a completed KDVA Form 04/04.

Section 3. To be eligible to receive a stipend, a veterans' service organization shall;
(1) Register as a state vendor and receive a state vendor number. Registration shall be completed online at https://eprocurement.ky.gov;
(2) Verify the veteran's service from the veteran's DD-214 form; and
(3) Not receive an honorarium, donation, or other payment from the funeral home or the veteran's family for the military burial honors provided for the veteran.

Section 4. Incorporation by Reference. (1) KDVA Form Vet-
ers' Service Organization Request for Honors Stipend, 11/06, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vet-
ers' Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The following material is incorporated by reference:
(a) Department of Veterans Affairs KDVA Form 01/A/4]
MARLAN M. PINKSTON, Deputy Commissioner
For LESLIE E. BEAVERS, Commissioner
APPROVED BY AGENCY: September 15, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: David Worley, Cemetery Branch Manager, Department of Veterans Affairs, 11118 Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)

103 KAR 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1), 141.120(10)(b)
EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multistate corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the property factor for the multistate business income apportionment formula. This administrative regulation establishes the requirements [provides guidelines] for determining the property factor of a multistate corporation.

Section 1. Definitions. (1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property included:
   (a) "Includable [Annual-rent-included]:"
   1. Any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise; and
   2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement
   (b) Not Including:
      (b) Annual-rent does not include:
      1. Amounts paid as service charges, such as utilities or janitorial services; and
      2. Incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles.
   (2) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subrentals, which shall:
      (a) Sub-rentals shall be subtracted if they constitute nonbusiness income; and
      (b) Sub-rentals shall not be subtracted if they constitute business income because the property which produces the subrental is used in the regular course of a trade or business of the taxpayer when it is producing business income.
   (3) "Original cost" means the basis of the property for federal income tax purposes, [ignoring any adverse adjustments] at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, or abandonment.

Section 2. General. The property factor shall include [includes] all real and tangible personal property owned or rented and used during the taxable year, except coin, currency, and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue.

Section 3. Property Used. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed shall be included in the factor.
   (2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.
   (3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
   (2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Nominator. (1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation shall be considered at the destination location for purposes of the numerator. In the numerator, the property’s compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost.
   (2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state purposes.
   (3) If the original cost of property is not ascertainable, is nominal, or is zero, the property shall be included in the numerator of the factor of the state to which the employee’s compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 7. Rented Property. (1) Annual rental rate shall be determined as follows:
   (a) If the property is rented for a twelve (12) month period, the annual rent:
   (b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental:
   (c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized.
   (2) Annual rent charged by a corporation shall be valued at eight (8) times the net annual rental rate.
   (b) If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value as may be required by the department or may be requested by the corporation, except that the annual rent rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation’s rental property.
   (c) If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the
relative values of the rent and the other items.

(3) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Fluctuations in the values of the property exist during the tax period,

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at AARRS, November 14, 2006)


RELATES TO: KRS 141.010, 141.040
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.010(19)(a) prohibits a deduction from gross income for state taxes computed, in whole or in part, by reference to gross or net income. This administrative regulation establishes the requirements for [provides guidance on] the deductibility of the portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base, the Massachusetts Corporation Excise Tax and West Virginia Business and Occupations Tax.

Section 1. The portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), shall be deductible in computing Kentucky net income.

Section 2. The Massachusetts Corporation Excise Tax imposed by Massachusetts General Law Chapter 63, Sections 32 and 39 shall be deductible as follows:

(1) Any amount of the tax paid that is based on tangible property shall be deductible.

(2) Any amount of the tax paid that is based on net worth shall be deductible.

(3) Any amount of the tax paid that is based on net income shall not be deductible.

Section 3. The West Virginia Business and Occupation Tax Imposed by West Virginia Code 11-13-2 on utilities shall be deductible as follows:

(1) Any amount of tax paid by electric power producers based upon average taxable generating capacity shall be deductible.

(2) Any amount of tax paid by electric power distributors based on kilowatt hour shall be deductible.

(3) Any amount of tax paid by a natural gas storage business based on the amount of gas in the storage facility or the average monthly tax paid for a five-year period shall be deductible.

(4) Any amount of tax paid by a manufacturer or producer of synthetic fuels that is based on the weight of the fuel manufactured or produced shall be deductible.

(5) Any amount of tax paid by a public service company or utility business that is based on gross income shall not be deductible.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARR, November 14, 2006)


RELATES TO: KRS 141.010, 141.040, 141.050
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.040(1) imposes the corporation income tax on corporations that are doing business in this state. Foreign sales corporations and domestic international sales corporations are special corporate entity designations for federal income tax purposes under the Internal Revenue Code. This administrative regulation establishes the requirements for [provides guidance on] the Kentucky corporation income tax treatment of foreign sales corporations and domestic international sales corporations.

Section 1. Definitions. (1) "Domestic International sales corporation" means a DISC as defined in Section 922 of the Internal Revenue Code, 26 U.S.C. 922.

(2) "Foreign sales corporation" means a foreign sales corporation as defined in Section 922 of the Internal Revenue Code, 26 U.S.C. 922 in effect prior to its repeal by Pub.L. 106-519.

Section 2. Kentucky Corporation Income Tax Treatment of Foreign Sales Corporations. A foreign sales corporation that has transactions that arise from contracts that were binding on September 30, 2000 shall be subject to Kentucky's corporation income tax if the foreign sales corporation is doing business in Kentucky as defined by KRS 141.010(25).

Section 3. Kentucky Corporation Income Tax Treatment of Domestic International Sales Corporations. A corporation recognized as a domestic international sales corporation for federal income tax purposes shall be recognized as a domestic international sales corporation for Kentucky income tax purposes if the corporation is doing business in Kentucky as defined by KRS 141.010(25).

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)

103 KAR 16:390. Attachment for corporate officer information - Form 720, 720S, and 765, Schedule Q.

RELATES TO: KRS 131.130(3)

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: [Revenue Form 720, 720S, and 765, Schedule Q require that the name, address, and social security number of the president, vice-president, secretary, and treasurer be provided when filing a corporation tax return.] KRS 131.130(3) provides that the department may prescribe a form necessary for the administration of any revenue law by the promulgation of an administrative regulation. This administrative regulation provides guidance as to filing requirements for an attachment for Officer Information, Schedule Q of Form 720, 720S, and 765 completed by software vendors if [when] space provided on a form is inadequate.

Section 1. Definitions. (1) "Officer" means president, vice-president, secretary, and treasurer.

Section 2. Information Required on the Attachment. The attachment shall include the following information:

(1) Name of president, vice-president, secretary, and treasurer;

(2) Home address of president, vice-president, secretary, and treasurer; and

(3) Social security number of president, vice-president, secretary, and treasurer.

Section 3. Filing Requirements When Using Attachment. (1) The attachment shall be attached directly to Form 720, Form 720S, or Form 765.

(2) [and] The phrase "See Attached Schedule" shall appear on the Form 720, 720S, or 765, Schedule Q, President's name line.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 720 - Kentucky Corporation Income Tax Return (Form 41AT20)", October 2005;

(b) "Form 720S - Kentucky S Corporation Income Tax Return (Form 41AT20S)", October 2005; and

(c) "Form 765 - Kentucky Partnership (LLC, LLP, and LP Taxed As a Corporation) Income Tax Return (Form 41AT765)", [2005/06].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 5 p.m.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Mooms, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)

103 KAR 17:120. Estimated tax penalty.

RELATES TO: KRS 131.175, 131.180, 141.050, 141.300, 141.305, 141.990

STATUTORY AUTHORITY: KRS 131.130(1), 131.175, 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 131.175 authorizes the commissioner to waive penalties if the failure to file or pay timely is due to reasonable cause. [Department of Revenue to promulgate administrative regulations concerning waiver of penalties.] This administrative regulation establishes [provides information on] exceptions to the application of estimated tax penalties provided in KRS 141.990 (2) and 131.180(3).

Section 1. General. Except as provided in Section 2 of this administrative regulation, an individual required by KRS 141.300 to file a declaration of estimated tax and required by KRS 141.305 to provide the declaration of estimated tax shall be subject to a penalty as provided in KRS 131.180 for a declaration underpayment or a late payment.

Section 2. Exceptions. In addition to the exceptions established in KRS 141.990(2), the penalty shall not apply to: (1) A taxable year in which the death occurs of:

(a) The taxpayer; or

(b) The taxpayer's spouse if the taxpayer is filing a joint return with the deceased spouse;

(2) A taxable year in which the amount of prepaid tax equals or exceeds the previous year's income tax liability if the previous year was not less than twelve (12) months; or

(3) A taxable year in which a taxpayer exercises a personal and family exemption under subsection (6) of KRS 141.305;

(4) A taxable year in which a person has a tax liability of $500 or less; or

(5) A taxable year in which the taxpayer files a return and pays the full amount of the tax computed on the return on or before January 31 of the succeeding taxable year and the declaration is not required until January 15 after the close of the taxable year.

Section 3. A taxpayer reporting income on a fiscal year basis shall substitute dates corresponding to the fiscal year for the dates specified for reporting the income on a calendar year basis under KRS 141.300(3) and for paying the estimated tax under KRS 141.305.

Section 4. Waiver of Penalties. A taxpayer who does not qualify for an exception established in Section 2 of this administrative regulation may request a waiver of penalty under the provisions of 103 KAR 1.040.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 11, 2006
CONTACT PERSON: Gary Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)

103 KAR 17:130. Individual income tax - military personnel - nonresidents.

RELATES TO: KRS 141.020 and 50 U.S.C. App. [see] 571

STATUTORY AUTHORITY: KRS 131.130, 141.020, 141.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. 50 U.S.C. App. 571, known as the Servicemembers Civil Relief Act (Pub. L. 108-189), prohibits a state from imposing a tax on income or compensation from military service on servicemembers who are temporarily located in the state because of military assignments and prohibits a state from using the military income to increase any tax due on income from nonmilitary sources. A servicemember shall file state income tax
returns with his or her state of legal domicile, which usually is
the state of residence prior to entering military service. This
administrative regulation establishes the income tax filing re-
quirements for servicemembers [re]necessary to interpret the
individual income tax law as it applies to filing requirements of
serving military and civilian employees of the U.S. government,
including the [purpose of this regulation is to provide guidance
to] residents of other states that are serving in the military and
stationed in Kentucky.

Section 1. Definition. "Servicemember" means servicemem-
ber as defined in 30 U.S.C. App. 5111(1) [a member of the Armed
Forces, Army, Navy, Marine, Air Force, or Public Health Service
of the United States government].

Section 2. [General] 30 U.S.C. App. Section 571, known as the
Servicemembers Civil Relief Act (Pub. L. 108-189), prohibits a state
from imposing a tax on income or compensation from military ser-
vice on servicemembers who are temporarily located in the state
because of military assignment. The act also prohibits a state from
using the military income to increase any tax due on income from
nonmilitary sources. A servicemember shall file state income tax
returns with his or her state of legal domicile, which usually is the
state of residence prior to entering military service.

Section 3. A [4] nonresident servicemember who is [ser-
vicemembers who are] temporarily located in Kentucky [the state]
because of military assignment shall not be [are not] required to
report income or compensation from service in the military, Income
from nonmilitary Kentucky sources shall be [are] subject to Ken-
tucky income tax and shall be reported under the provisions of 103
KAR 17 060.

Section 4.,[5] A civilian spouse of a nonresident servicemen
ser who lives or works in Kentucky shall determine filing re-
quirements based upon the provisions of 103 KAR 17 060.

Section 5.,[6] A nonresident civilian who marries a Kentucky
resident servicemember who is living outside of Kentucky shall not
be [are not] considered a resident of Kentucky merely because the
servicemember is considered a resident for tax purposes.

Section 6.,[7] A resident servicemember may change his or
her state of domicile from Kentucky to another state in which he or
she resides. Notice of intent to change domicile shall be filed with the
personnel department of the appropriate military service.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON. Gary Morris, Executive Director, Office
of Income Taxation, Department of Revenue, 200 Fair Oaks Lane,
Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-
3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
131.130(1) authorizes the department to promulgate administrative
regulations to administer and enforce Kentucky's tax laws. The
Department of Revenue has many policies and circulars, a number
of which predate the enactment of KRS Chapter 13A, that conflict
with current tax laws. This administrative [The purpose of this]
regulation [re]formally rescinds [rescinded] obsolete withholding
tax circulators.

Section 1. The following withholding tax circulators of the De-
partment of Revenue are rescinded and shall be null, void, and
unenforceable:

1. Revenue Circular 42C010 - Withholding tax reporting pro-
cedures under the Ky. Revitalization Authority. This circular is be-
ing rescinded because it is obsolete. Guidance on withholding tax
reporting procedures under the Kentucky Revitalization Authority
is available in 103 KAR 18:160 - Withholding Tax Reporting Pro-
cedures Under the Kentucky Revitalization Authority.

2. Revenue Circular 42C011 - Kentucky, Withholding tax re-
porting procedures under the Kentucky Jobs Development Authority.
This circular is being rescinded because it is obsolete. Guidance on
withholding tax reporting procedures under the Kentucky Jobs
Development Authority is available in 103 KAR 18:210, Ken-
tucky Jobs Development Act Service and Technology Job
Creation Assessment Fee [Withholding Tax Reporting Pro-
cedures Under the Kentucky Jobs Development Authority].

3. Revenue Circular 42C012 - Kentucky, Withholding tax re-
porting procedures under the Ky. Rural Economic Development
Authority. This circular is being rescinded because it is obsolete.
Guidance on withholding tax reporting procedures under the Ken-
tucky Rural Economic Development Authority is available in 103
KAR 18:190, Kentucky Rural Economic Development Act Job
Development Assessment Fee [Withholding Tax Reporting Pro-
cedures Under the Kentucky Rural Economic Development
Authority].

4. Revenue Circular 42C013 - Kentucky, Withholding tax re-
porting procedures under the Ky. Industrial Development Act. This
circular is being rescinded because it is obsolete. Guidance on
withholding tax reporting procedures under the Kentucky Industrial
Development Act is available in 103 KAR 18:200, Kentucky In-
dustrial Development Act Job Development Assessment Fee [With-
holding Tax Reporting Procedures Under the Kentucky Industrial
Development Act].

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON. Gary Morris, Executive Director, Office
of Income Taxation, Department of Revenue, 200 Fair Oaks Lane,
Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-
3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)

103 KAR 18:180. Kentucky Industrial Revitalization Act job
revitalization assessment fees.

RELATES TO: KRS 141.403, 154.26-010, 154.26-100
STATUTORY AUTHORITY: KRS 131.130(1), 141.403(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
131.130(1) authorizes the Department of Revenue to promulgate
administrative regulations to administer and enforce Kentucky's tax
laws. KRS 141.403(9) authorizes the department to promulgate
administrative regulations to require the filing of forms neces-
sary to comply with KRS 154.26-010 to 154.26-100, the Ken-
tucky Industrial Revitalization Act, and the allowable income
tax credit that a company may retain under those statutes.
This administrative regulation establishes the procedure for
filing requirements for the assessment authorized by KRS
154.26-100.

Section 1. Definitions. (1) "Annual Report" means Form Num-
ber 42A814, which is Incorporated by reference in 103 KAR
1:050, [ ]

(2) "Approved company" is defined in KRS 154.26-010(4)(E)

(3) "Assessment" is defined in KRS 154.26-010(6)(E).

- 1520 -
(4) "Authority" is defined in KRS 154.22-010(7). [1]
(5) "Department" means the Department of Revenue.[2]
(6) "Economic development project" or "project" is defined in KRS 154.22-010(9). [1]
(7) "Gross wages subject to income tax" mean any payment an employer gives an employee for services performed as reported in box 1 of Internal Revenue Service Form W-2, Wage and Tax Statement.[3-8 and 19-22]
(8) "KIRA" means the Kentucky Industrial Revitalization Act, which is codified as KRS 154.22-010 to 154.22-100.

Section 2. Annual Report for Assessment. (1) An approved company with a KIRA project shall file an annual report with the department.
(2) An annual report for the KIRA assessment shall be faxed or mailed to the department on or before March 15 to report wage assessments claimed for the preceding calendar year.
(3) Information required on the annual report shall include:
(a) Business name;
(b) KIRA number assigned by the Cabinet for Economic Development;
(c) Kentucky withholding account number;
(d) Activation date of project;
(e) Total annual gross wages subject to income tax for all KIRA employees;
(f) Total annual Kentucky KIRA wage assessments claimed;
(g) Total annual local KIRA wage assessments claimed; and
(h) Total annual Kentucky tax withheld and reported for all employees.
(4) Information required to be submitted as an attachment to the annual report in a spreadsheet format shall include:
(a) Each eligible employee's name;
(b) Each eligible employee's social security number;
(c) Each eligible employee's state of residence;
(d) Annual gross wages subject to income tax per eligible employee;
(e) Annual Kentucky tax withheld per eligible employee; and
(f) Annual Kentucky KIRA wage assessment claimed per eligible employee.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary Moms, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRIS, November 14, 2006)

RELATES TO: KRS 141.347, 154.22-010, 154.22-070 [164.22]
STATUTORY AUTHORITY: KRS 131.130(1), 141.347(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.347(9) authorizes the department to promulgate administrative regulations to require the filing of forms necessary to comply with KRS 154.22-020 to 154.22-070, the Kentucky Rural Economic Development Act, and the allowable income tax credit that a company may retain under those statutes. This administrative regulation establishes the [provides guidance as to] filing requirements for the job development assessment fee authorized by KRS 154.22-070 [154.22-030 to KRS 154.22-080].

Section 1. Definitions. (1) "Annual Report" means Form Number 42A81, which is incorporated by reference in 103 KAR


RELATES TO: KRS 141.400, 154.22-010, 154.22-110 [164.28]
STATUTORY AUTHORITY: KRS 131.130(1), 141.400(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.400(9) authorizes the department to promulgate administrative regulations to require the filing of forms necessary to comply with KRS 154.22-010 to 154.22-080, the Kentucky Industrial Development Act, and the allowable income tax credit that a company may retain under those statutes. This administrative regulation establishes the [provides guidance as to] filing requirements for the assessment authorized by KRS 154.22-100.

Section 1. Definitions. (1) "Annual report" means Form Number 42A812, which is incorporated by reference in 103 KAR
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

Section 2. Annual Report for Assessment. (1) An approved company that has elected to take assessments as its KIDA project Inducement shall file an annual report with the department.

(2) An annual report for the KIDA assessment shall be faxed or mailed to the department on or before March 15 to report wage assessments claimed for the preceding calendar year.

(3) Information required on the annual report shall include:
   (a) Business name;
   (b) KIDA number assigned by the Cabinet for Economic Development;
   (c) Kentucky withholding account number;
   (d) Activation date of project;
   (e) Total annual gross wages paid to eligible KIDA employees;
   (f) Total annual Kentucky KIDA wage assessments claimed;
   and
   (g) Total annual Kentucky tax withheld and reported for all employees.

(4) Information required to be submitted as an attachment to the annual report in a spreadsheet format shall include:
   (a) Each eligible employee’s name;
   (b) Each eligible employee’s social security number;
   (c) Each employee’s state of residence;
   (d) Annual gross wages per employee;
   (e) Annual Kentucky tax withheld per eligible employee; and
   (f) Annual Kentucky KIDA wage assessment claimed per eligible employee.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 141.407, 154.24-010, 154.24-110 [154.24]
STATUTORY AUTHORITY: KRS 131.130(1), 141.407
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky’s tax laws. KRS 141.407(9) authorizes the department to promulgate administrative regulations to require the filing of forms necessary to comply with KRS 154.24-110. The Kentucky Jobs Development Act and the allowable income tax credit that a company may retain under those statutes. This administrative regulation establishes the [provide guidance as to] filing requirements for the assessment authorized by KRS 154.24-110.

Section 1. Definitions. (1) "Annual report" means Form Num-
ber 42A813, which is incorporated by reference in 103 KAR 10:50-1.

(2) "Approved company" is defined in KRS 154.24-010(3).

(3) "Assessment" is defined in KRS 154.24-010(5).

(4) "Authority" is defined in KRS 154.24-010(6).

(5) "Department" means the Department of Revenue.

(6) "Economic development project" or "project" is defined by KRS 154.24-110(1).

(7) "Gross wages" mean any payment an employer gives an employee for services performed as reported in box 1 of Internal Revenue Service Form W-2, Wage and Tax Statement.

(8) "Inducement" is defined in KRS 154.24-010(15), 154.24-010(12), and

(9) "KIDA" means the Kentucky Industrial Development Act, which is codified as KRS 154.24-010 to 154.24-100.


RELATES TO: KRS 141.401, 154.23-010, 154.23-055 [154.23]
STATUTORY AUTHORITY: KRS 131.130(1), 141.401(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky’s tax laws. KRS 141.401(9) authorizes the department to promulgate administrative regulations to require the filing of forms necessary to comply with KRS 154.23-010 and 154.23-079. The Kentucky Economic Opportunity Zone Act, and the allowable income tax credit that a company may retain under those statutes. This administrative regulation establishes the [provide guidance as to] filing requirements for the assessment authorized by KRS 154.23-055.
Section 1. Definitions. (1) "Annual report" means Form Number 42A816, which is incorporated by reference in 103 KAR 1:050.
(2) "Approved company" is defined in KRS 154.23-010[(4)].
(3) "Assessment" is defined in KRS 154.23-010[(4)].
(4) "Authority" is defined in KRS 154.23-010[(5)].
(5) "Department" means the Department of Revenue.
(6) "Economic development project" or "project" is defined in KRS 154.23-010[(8)].
(7) "Gross wages exclusive of any noncash benefits" mean any payment an employer gives an employee for services performed as reported in Box 1 of Internal Revenue Service Form W-2, Wage and Tax Statement, and
(8) "KEOZ" means the Kentucky Economic Opportunity Zone Act, which is codified as KRS 154.23-005 to 154.23-079.

Section 2. Annual Report for Assessment. (1) An approved company with a KEOZ project shall file an annual report with the department.
(2) An annual report for the KEOZ assessment shall be faxed or mailed to the department on or before March 15 to report wage assessments claimed for the preceding calendar year.
(3) Information required on the annual report shall include:
(a) Business name;
(b) KEOZ number assigned by the Cabinet for Economic Development;
(c) Kentucky withholding account number;
(d) Activation date of project;
(e) Total annual gross wages exclusive of any noncash benefits paid to eligible KEOZ employees;
(f) Total annual Kentucky KEOZ wage assessments claimed;
(g) Total annual local KEOZ wage assessments claimed; and
(h) Total annual Kentucky tax withheld and reported for all employees.
(4) Information required to be submitted on the annual report in a spreadsheet format shall include:
(a) Each eligible employee's name;
(b) Each eligible employee's social security number;
(c) Each employee's state of residence;
(d) Annual gross wages exclusive of any noncash benefits to eligible employees;
(e) Annual Kentucky tax withheld per eligible employee; and
(f) Annual Kentucky KEOZ wage assessment claimed per eligible employee.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: September 13, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Gary Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5495, fax (502) 564-3392.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, November 14, 2006)

103 KAR 28:150. Collection of sales tax on certain motor vehicle sales.
RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.140, 139.200, 139.260, 139.470, 139.720
STATUTORY AUTHORITY: KRS 131.130, 139.710
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refunding, and administration of taxes. This administrative regulation establishes requirements for the application and reporting of the sales tax by sellers of motor vehicles to certain nonresidents pursuant to KRS 139.470(21)(b).

Section 1. Definition. "Motor vehicle" is defined in KRS 139.450(3) (has the same meaning as defined in KRS 139.450).

Section 2. Reporting Requirements. A motor vehicle dealer making sales of motor vehicles shall:
(1) Maintain records pursuant to KRS 139.720;
(2) Collect, report, and remit applicable sales tax on motor vehicle sales to nonresidents not exempt under KRS 139.470(21)(b);
(3) Provide a completed copy of the "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle" (Revenue Form 51A270) to each customer from whom Kentucky sales tax is due; and
(4) File a supplementary schedule entitled "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule" (Revenue Form 51A135) for each sales tax filing period that includes sales tax from sales of motor vehicles.

Section 3. Filing Process. The due date of the supplementary schedule shall be (i) the same due date as the sales and use tax return for which the supplement is required. The supplementary schedule shall be filed separately from the sales and use tax return according to the Instructions provided by the department.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", Form 51A270, (August 2006); and
(b) "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", Form 51A135, (July 2006).
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 5 p.m.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: August 30, 2006
FILED WITH LRC: August 30, 2006 at 4 p.m.
CONTACT PERSON: Richard Dobson, Executive Director, Department of Revenue, Office of Sales and Excise Taxes, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5523, fax (502) 564-2906.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 14, 2006)

301 KAR 2:015. Feeding of wildlife.
RELATES TO: KRS 150.015 [140.010]
STATUTORY AUTHORITY: 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015(1) requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(1) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause substantial harm to the wildlife population if left unregulated. KRS 150.025 grants the department authority to regulate and restrict where, when, and how wildlife are taken as necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes dates and other restrictions for the feeding of wildlife.

Section 1. Definitions. (1) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids pursuant to 301 KAR 2:083 and wildlife being rehabilitated or held
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Section 2. Issuance, Sale and Transfer of Special Permit (1) There shall be no more than ten (10) two-(2) special permits issued per species per year.
(2) An applicant may apply for one (1) special permit per species by [for the forthcoming season & after] the May 1 deadline for applications.
(3) A proposal for special permit pursuant to KRS 150.177 shall be submitted to the Kentucky Fish and Wildlife Commission during the period prior to May 1. The proposal shall contain and identify:
(a) The name of the organization making the request and the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal;
(b) The permit requested and the species and year for which it would be valid;
(c) The proposed wildlife conservation projects for which the proceeds would be used;
(d) The methods by which the permit would be transferred to an individual;
(e) The estimated amount of money to be raised and the rationale for that estimate;
(f) Any special needs or particulars relevant to the proposal, including time frame, limitations, or schedules; and
(g) One (1) copy of the organization’s articles of incorporation shall accompany the proposal with proof that the organization has tax-exempt status.
(4) A letter accompanying the proposal shall include a statement that the applicant agrees to the conditions set forth in KRS 150.177 and this administrative regulation and shall be signed and dated by the authorized officer of the organization.
(5) The commission shall return to the applicant any application which does not conform with the requirements of KRS 150.177 or this administrative regulation. In selecting an applicant, the commission shall consider the written proposal and the proposed uses for the proceeds, the qualifications of the applicant as a fund raiser, the proposed fund raising plan, the applicant’s previous involvement with wildlife management, and its conservation objectives. Proposals from previous successful applicants may not be considered if permits issued to them were not used or transferred. The commission may accept any proposal in whole or in part and may reject any proposal. Commission approval and issuance of any special permit is contingent upon compliance with subsections (2), (5), and (6) of this administrative regulation.
(6) All successful applicants shall agree in writing to the following:
(a) To use all proceeds from the sale of transfer of the permit [shall be used] for conservation projects in Kentucky that are approved by the Kentucky Fish and Wildlife Commission;
(b) To underwrite all promotional and administrative costs to sell and transfer the special permit;
(c) To sell and transfer each special permit as described in the proposal;
(d) To provide the department with the name, address, and physical description of each individual to whom each special permit is transferred.
(e) To provide the department, within one (1) year of issuance of the special permit, a report summarizing:
1. The amount of money raised; and
2. The specific impact the money had on the proposed conservation project in the application submitted to and approved by the Kentucky Fish and Wildlife Commission.
(7) The department and the successful applicant shall agree:
(a) The specific project or purpose as approved by the commission; and
(b) The date when the wildlife project or purpose will be accomplished and procedures for review of project.

Section 3. Use of Permits. (1) A special permit shall be valid only for the individual named on the permit and for the species for which the permit was issued. A special permit shall be valid for the
forthcoming season following the commission meeting in which the special permit was awarded.

(2) A person using a special permit shall comply with all state laws and administrative regulations, including seasons, bag limits and size restrictions.

(3) Notwithstanding any other provision of law, a holder of a special permit for deer shall be entitled to take one (1) additional antlered or antlerless deer per license year.

(4) Notwithstanding any other provision of law, a holder of a special permit for turkey shall be entitled to take one (1) additional turkey of either sex per license year, in addition to the statewide permit. A holder of a special permit for turkey may not hunt on Wildlife Management Areas that are closed to the general public during the tukey season.

(5) Notwithstanding any other provision of law, a holder of the special permit for deer may hunt on any Wildlife Management Area, including Wildlife Management Areas otherwise closed for special hunts or otherwise closed to hunting, except hunting shall not be allowed on waterfowl refuges that are closed. A holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting. A holder shall also notify the area manager upon leaving a Wildlife Management Area.

(6) Unless specific equipment is prohibited on a Wildlife Management Area, a holder of a special permit shall use the legal hunting equipment that is allowed for the season occurring when the holder is hunting, as well as any other hunting requirements in place during that season.

(7) A holder of a special permit may also hunt on private land with the permission of the landowner, but shall comply with the restrictions regarding the season where the land is located.

MARK S. CRAMER, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: September 15, 2006
FILED WITH LRC: September 15, 2006
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-9136.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARR’s, November 14, 2006)

301 KAR 6:020. Boating safety equipment.

RELATES TO: KRS 235.200, 235.205, 235.280
STATUTORY AUTHORITY: KRS 235.200, 235.280[235.320, 235.360]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280

301 KAR 6:020.100. Boating Safety Equipment Requirements. (1) Except as provided in subsection (2) of this section, a person shall not operate a vessel with an enclosed engine [person shall not operate vessel with enclosed engine] without effective U.S. Coast Guard-approved fire extinguishers on board.

(2) A person [Person] may operate the following without fire extinguishers:

(a) An outboard engine [outboard engines]; or

(b) A vessel with an engine [vessels with engines] completely open by design and not originally equipped with Underwriters Laboratory or U.S. Coast Guard-approved fire extinguishers.

(3) A person shall not operate a vessel [person shall not operate vessel] without adequate ventilation of bilges, engine compartments, fuel compartments or other enclosures.

(4) A person shall not operate a vessel [person shall not operate vessel] originally equipped with a carburetor drip pan without the drip pan in place and maintained in a functioning condition.

(5) A person [Person] shall not operate vessels whose bilges are not maintained free from oil or grease.

Section 2. Lighting Equipment. (1) Between actual sunset and sunrise:

(a) Power driven boats less than sixty-five and six-tenths (65.6) feet in length, including sailboats operating under engine power, shall have:

Red and green sidelights. The red and green sidelights shall:

- Have a red light indicating the port (left) side, and a green light indicating the starboard (right) side of the boat;
- Be visible to another boat approaching from the side or head on;
- Be visible from at least one (1) mile on a clear, dark night if the boat is less than thirty-nine and four tenths (39.4) feet in length;

- Either:
  - An all-around white light which shall be at least thirty-nine and four tenths (39.4) feet in length;
  - A white masthead light that shines forward;
  - A white stern light visible from the rear of the boat.

(b) Operators of Class A or Class I motorboats shall display:

- A white light near the stem of the vessel visible in a 360 degree arc;
- A combined red and green light near the bow of the vessel which is:
  - Lower than the white light; and
  - As stipulated in subsection (2) of this section.

(c) Operators of Class II or Class III motorboats shall display:

- A white light mounted near the bow of the vessel which is visible from dead ahead to 112.5 degrees on either side of the vehicle;

(d) A white light mounted near the stem of the vessel which is:

- Higher than the forward white light; and
- Visible in a 360 degree arc.

(e) Operators of Class IV or larger vessels propelled by sail alone shall display:

- Red and green lights as stipulated in subsection (2) of this section;

(f) A white stern light which shows in an arc of 135 degrees behind the vessel.

(2) An operator of a manually-powered vessel or sailboat less than twenty-two (22) feet, nine (9) inches in length [operators of manually-powered vessels or sailboats less than twenty-two (22) feet, nine (9) inches] shall:

- Carry aboard and have immediately available for use a white light of sufficient intensity to illuminate the vessel and its occupants;

- Display the white light in time to prevent a collision from an approaching vessel.

(c) (ii) A person [Person] operating or responsible for a vessel [vessels] anchored or afloat in a normal navigation channel or passageway, shall display a white light visible in a 360 degree arc.

(2) Combination or separate red and green lights shall:

- Have an arc of visibility extending from dead ahead to 112.5 degrees on either side of the vessel;
- Show the red light on the port side, and the green light on the starboard side, of the vessel; and
- Be visible at a distance of at least one (1) mile on a dark night with clear atmosphere.

(3) White lights required by this section shall be visible at a distance of at least two (2) miles on a dark night with clear atmosphere.

(4) On a vessel [vessels] under way between sunset and
Section 3. Signaling Devices. (1) An operator of a Class I or larger vessel [Operators of Class I or larger vessels] shall have on board a hand, mouth, or power-operated signaling device:
(a) Capable of producing a blast of two (2) seconds duration; and
(b) Audible for:
   1. One-half (1/2) mile for Class I vessels.
   2. One (1) mile for Class 2 vessels.
   3. One and one-half (1 1/2) miles for Class 3 vessels.

(2) Nothing in this administrative regulation shall exempt a vessel from additional sound devices required by the U.S. Coast Guard or other governmental agencies.

Section 4. Personal Flotation Devices. (1) An operator of a Class 1, 2, or 3 recreational vessel [Operators of Class I, II, or III recreational vessels] shall have on board a minimum of:
(a) One (1) Type I, Type II or Type III personal flotation device for each person on board the vessel; and
(b) Except for canoes or kayaks, one (1) Type IV personal flotation device.

(2) An operator of a Class A recreational vessel [Operators of Class A recreational vessels] shall have on board a minimum of:
(a) One (1) Type I, Type II, or Type III personal flotation device for each person on board the vessel.
(b) Personal flotation devices shall be:
   (a) Approved by the U.S. Coast Guard; and
   (b) In good and serviceable condition.
(c) Type II, III, or III personal flotation devices shall be of appropriate size for the wearer and readily accessible.
(d) Type IV personal flotation devices shall be immediately available to the user.
(e) The following shall be exempt from the personal flotation device requirements of this section:
   (a) Manually propelled racing vessels;
   (b) Sailboats.

(3) An operator [Operators] may substitute Type V personal flotation devices for other required personal flotation devices, if the Type V device:
(a) Is approved by the U.S. Coast Guard for the type of vessel and activity in which the vessel is being used; and
(b) Is being used according to the approved conditions on the label.

Section 5. Fire Extinguishers. (1) An operator of a vessel which contains [Operators of vessels which contain] butane gas, propane gas, kerosene, gasoline or other petroleum-consuming device shall have on board at a minimum:
(a) Class A or Class 1 vessels, one (1) B-1 fire extinguisher.
(b) Class 2 vessels:
   1. With fixed systems, one (1) B-1 fire extinguisher.
   2. Without fixed systems, two (2) B-1 fire extinguishers.
(c) Class 3 vessels:
   1. With fixed systems:
      a. Two (2) B-1 fire extinguishers; or
      b. One (1) B-2 fire extinguisher.
   2. Without fixed systems:
      a. Three (3) B-1 fire extinguishers; or
      b. One (1) B-1 and one (1) B-2 fire extinguishers.

(2) Operators shall:
(a) Maintain fire extinguishers in workable condition; and
(b) Have them available for immediate and effective use.

Section 6. Except for a vessel [vessels] operated for the purposes of firefighting or rescue by the United States Coast Guard, the Commonwealth of Kentucky, a county, city or other governmental entity, operators shall not display flashing, rotating or oscillating red lights on a vessel [vessels].

Section 7. Vessels Without Required Safety Equipment. (1) If an official of the department, or any other law enforcement officer, observes a vessel operating without the safety equipment specified in this administrative regulation, he may direct the operator to take whatever immediate and reasonable steps are necessary to correct the deficiency, including directing the operator to return to a mooring and remaining there until the situation creating the unsafe condition is corrected.
(2) If a vessel is directed to return to a mooring, the officer may affix a notice to the vessel:
(a) Indicating the nature of the unsafe condition; and
(b) Requiring it's correction before the vessel is further operated.

MARK S. CRAMER, Deputy Commissioner
For DR., JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: September 15, 2006
FILED WITH LRC: September 15, 2006 at 11 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

JUSTICE AND PUBLIC SAFETY CABINET
Office of Investigations
(As Amended at ARS, November 14, 2006)

500 KAR 13:020. Office of Investigations [Internal Investigations Unit].

RELATES TO: KRS 15A 065 [Chapter-16A]
STATUTORY AUTHORITY: KRS 15A.160[, U.S. v.-Commonwealth, Civil Action No. 3 05 CV-7676]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Office of Investigations, Office of the Secretary, ["Of- fice of Investigations/Internal Investigations Unit"] (hereinafter "OOI") Office of the Secretary. The "OOI" may ["OOI""] conduct investigations of [all] special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet. The OOI may investigate any other issue or deemed necessary at the request of the Commissioner of the Department of Juvenile Justice or with the approval of the Executive Director of OOI. Any allegation of an alleged special incident not investigated by OOI shall be referred by the Executive Director of OOI to be investigated by another individual or agency.

Section 1. Definitions. (1) "Exonerated" means the incident occurred, but the accused's actions were justified or proper.
(2) "Facility" means a group home, day treatment, residential treatment, or youth development center, detention center, or any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of youth.
(3) "Initiation" means any action by the Office of Investigations intended to ensure the immediate safety of the alleged victim or to obtain evidence or information relevant to the investigation.
(4) "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.
(5) "Offender" means a person [who]:
(a) Who is employed at, volunteers in, visits, or contracts with a facility; and
(b) Against whom an allegation of a special incident has been made.
(6) "OOI" means Office of Investigations, Office of the Secretary, Justice and Public Safety Cabinet.
(7) "Pending further investigation" means a critical witness or the offender can not be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of OOI that prevents OOI from making a final
determination for its finding.

(8) "Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by an offender, including an [*offender*];

(a) Uses inappropriate or excessive force that results in injury;

(b) Uses inappropriate or excessive force that could result in an injury;

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the offender or another person;

(d) Uses inappropriate consequences as punishment such as excessive, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 (and dictated by policy) of the Department for Juvenile Justice;

(e) Allows or encourages a resident to:

1. Use drugs or alcohol;

2. Gamble or;

3. Engage in other illegal activity;

(f) Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;

(g) Allows or encourages a resident to:

1. Use drugs or alcohol;

2. Gamble or;

3. Engage in other illegal activity;

(h) Uses humiliating, demeaning, profane, or racially charged language directed at a resident;

(i) Uses verbal threats of harm directed at a resident;

(j) Exhibits a pattern of harassing conduct directed at a resident;

(k) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;

(l) Accepts a bribe from a resident or indicates a bribe would be accepted;

(m) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070;

(n) Enters into a business relationship with a resident;

(o) Extends unused special privileges to a resident in return for something done for staff;

(p) "Unfounded" means the charges are false or the employee was not involved in the incident;

(q) "Substantiated" means an incident occurred:

(a) By an admission of the person responsible;

(b) By a preponderance of the evidence;

(r) "Unsubstantiated" means the incident occurred:

(a) By an admission of the person responsible;

(b) By a preponderance of the evidence;

(s) "Incident" means any action by the Office of Investigations (Office) [internal] Investigations Unit (IIU) [internal] Investigations Unit (IIU) [Office of the Secretary, Justice Cabinet];

(t) "Offender" or "Perpetrator" means a person who is an individual employed at, volunteers in, contracts with, or is a resident of [or a volunteer at] a facility against whom an allegation of a special incident has been made [founded by the Internal Investigations Unit].

(u) "Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by an offender [a facility staff person]. It includes but is not limited to incidents when an offender [a facility staff person];

(a) Uses inappropriate or excessive force that results in an injury;

(b) Uses inappropriate or excessive force that could result in an injury;

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the offender [perpetrator] or another person;

(d) Uses inappropriate consequences as punishment such as excessive, harsh physical labor, or other physical consequences outside accepted practices of the Department for Juvenile Justice;

(e) Does not provide appropriate supervision, medical care, food, clothing, shelter or education;

(f) Allows or encourages a resident to:

1. Use drugs, alcohol or gamble;

2. Engage in other illegal activity;

(g) Uses humiliating, demeaning, profane or racially charged language or gestures directed at a resident;

(h) Uses verbal threats of harm directed at a resident;

(i) Exhibits a pattern of harassing conduct directed at a resident;

(j) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;

(k) Accepts a bribe from a resident or indicates a bribe would be accepted;

(l) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070;

(m) Enters into a business relationship with a resident;

(n) Extends unused special privileges to a resident in return for something done for staff;

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Correctional Complex policies and procedures, November 14, 2006 (September 14, 2006) [December 14, 2006], are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01 Public Information and Media Communication (Amended 11/14/06[2/14/06] [9/14/06])
WKCC 01-08-01 Smoking Policy (Amended 10/14/05)
WKCC 02-01-01 Inmate Funds (Amended 10/14/05)
WKCC 02-01-02 Inmate Canteen (Amended 11/14/06[2/14/06])
WKCC 03-00-06 Confidentiality of Information by Consultants, Contract Personnel, and Volunteers (Amended 11/14/06[2/14/06])
WKCC 06-00-01 Offender Records and Information Access (Amended 11/14/06[2/14/06] [12/4/06])
WKCC 08-02-01 Fire Safety Plan (Amended 10/14/05)
WKCC 09-11-01 Tool Control (Amended 10/14/05)
WKCC 10-02-02 Special Management Unit (SMU) Operating Procedures, Living Conditions and Classification (Amended 11/14/06[2/14/06])
WKCC 11-00-01 Food Services General Guidelines (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets (Amended 8/14/06[10/14/06])
WKCC 12-00-02 Housekeeping, Sanitation and Waste Removal (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 13-01-01 Use of Pharmaceutical Products (Amended 10/13/05)
WKCC 13-02-01 Health Care Services (Amended 10/14/05)
WKCC 13-02-10 Inmate Clothing and Personal Hygiene Provisions (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 14-04-01 Legal Services Program (Amended 10/14/05)
WKCC 15-01-01 Hair and Grooming Standards (Amended 10/14/05)
WKCC 16-01-01 Visiting Policy and Procedures (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 16-02-01 Inmate Correspondence (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 16-03-01 Inmate Access to Telephones (Amended 10/14/05)
WKCC 16-04-01 Inmate Pouches (Amended 10/14/05)
WKCC 17-01-01 Inmate Personal Property (Amended 10/14/05)
WKCC 17-02-01 Inmate Reception and Orientation (Amended 10/14/05)
WKCC 19-04-01 Assignment to and Safety Inspection of Inmate Work Program Areas (Amended 11/14/06[2/14/06]) [Work- and Program- Assignment]
WKCC 19-04-02 Correctional Industries (Amended 11/14/06[2/14/06])
WKCC 20-01-01 Education Program (Amended 9/14/06)
WKCC 21-00-01 Library Services (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities (Amended 10/13/05)
WKCC 22-00-02 Inmate Organizations (Amended 11/14/06[2/14/06])
WKCC 23-00-01 Religious Services (Amended 10/14/05)
WKCC 24-00-01 Social Services (Amended 11/14/06[2/14/06]) [10/14/06])
WKCC 25-02-01 Inmate Release Process (Amended 10/14/05)
WKCC 25-03-01 Pre-Release Programs (Amended 11/14/06[2/14/06])
WKCC 26-01-01 Volunteer Services Program (Amended 9/14/06)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice & Public Safety Cabinet, Office of Legal Services, 275 E. Main Street, P.O. Box 2400, [126-Holmes Street, 2nd- Floor] Frankfort, Kentucky 40602-2400 [2400] Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: September 11, 2006
FILED BY AGENCY: September 14, 2006 at 4 p.m.

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, fax (502) 564-5229.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, November 14, 2006)

803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.50-1926.65

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] [requires] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. [KRS 338.061(2)] provides that the board may adopt established federal standard and national consensus standards. 29 C.F.R. 1926.50 to 1926.65 establish the federal requirements relating to occupational health and environmental controls. This administrative regulation establishes the occupational health and environmental control [sanitary] standards to be enforced by the Office of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant secretary" means Commissioner of Labor, Kentucky Department of Labor.
(2) "Director" means Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.
(3) "U.S. Department of Labor" means Kentucky Department of Labor or U.S. Department of Labor.

Section 2. [(1) Until midnight of August 27, 2006, the construction industry shall comply with the occupational health and environment controls requirements established at 29 C.F.R. 1926.50 through 1926.65, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation.
(2) Beginning August 28, 2006.] The construction industry shall comply with the occupational health and environment controls requirements established at 29 C.F.R. 1926.50 through 1926.65, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: August 24, 2006
FILED WITH LRC: August 24, 2006 at 4 p.m.
CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-6582.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, November 14, 2006)

803 KAR 2:417. Steel erection.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.750 -.761 [and Appendices]

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STATUTORY AUTHORITY: KRS 338.051(3), 338.061(1)—9 C.F.R. 1926.750–761

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.750–761 establishes the federal requirements relating to steel erection. [KRS 338.051(2) authorizes the board to incorporate by reference established federal standards and national consensus standards.] This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry relating to steel erection.

(2) "Employee" is defined in KRS 338 015(2).
(3) "Employer" is defined in KRS 338 015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation.
(a) 29 C.F.R. 1926.750 through 1926.761, and Appendices, revised July 1, 2006; and
(b) The reorganization of 29 C.F.R. 1926.754(c)(3) and Appendix B, as published in the January 18, 2006, Federal Register, Volume 71, Number 11.


(b) Each employee engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge ten (10) feet or more [greater] above a lower level shall be protected from falling hazards by guardrails, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(3).

(b) Connectors and employees working in controlled decking zones shall be protected from fall hazards in accordance with subsection (5) and (6) of this section, respectively.

(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(1).

(b) Each connector shall be protected in accordance with subsection (2) of this section from fall hazards of ten (10) feet or more above a lower level.

(4)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(3).

(b) Each connector shall be provided with, wear, and utilize, at heights of ten (10) feet or more [greater] above a lower level, a personal fall arrest system, positioning device system, or fall restraint system; or be provided with other means of protection from fall hazards in accordance with subsection (1) of this section.

(5)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(c).

(b) A controlled decking zone (CDZ) may be established in that area of the structure over six (6) feet and up to ten (10) feet above a lower level [where] metal decking is initially being installed and forms the leading edge of a work area. In each CDZ, the following shall apply;

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training

(As Amended at ARRS, November 14, 2006)

803 KAR 2:422. Rollover protective structures; overhead protection.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.1000 – 1003 [and Appendix]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061(1)—9 C.F.R. 1926.1028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] [and 338.061 authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt end] promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1000 to 1003 establishes the federal requirements relating to rollover protective structures and overhead protection. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry relating to rollover protective structures and overhead protection [Express authority to incorporate by reference established federal standards and national consensus standards] is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

(2) "Employee" is defined in KRS 338 015(2).
(3) "Employer" is defined in KRS 338 015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation:
(1) 29 C.F.R. 1926.1000 through 29 C.F.R. 1926.1003, and Appendix revised July 1, 2008; and
(2) The amendment to Subpart W published in the December 29, 2005, Federal Register, Volume 70, Number 249 and confirmed in the February 28, 2006, Federal Register, Volume 71, Number 39.

Section 3. (1) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of
803 KAR 2:425. Toxic and hazardous substances.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] [requires] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. [KRS 338.061(2)] provides that the board may adopt established federal standards and national consensus standards. 29 C.F.R. Parts 1915, 1916, 1918, and 1919 establish federal requirements relating to maritime employment. The administrative regulation establishes maritime employment standards to be enforced by the Office of Occupational Safety and Health in the maritime industry.

Section 1. [1] Until midnight of August 27, 2006, the maritime industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. Part 1926.1101 through 1926.1152, revised as of July 1, 2006.

(2) Beginning August 28, 2006, the construction industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, 2006. [The construction industry shall comply with the toxic and hazardous substances requirements established at 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, 2006.]
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(5) Beginning August 28, 2006, the maritime industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. Part 1918, revised as of July 1, 2006, relating to safety and health standards for shipyard employment, as modified by the definitions in Section 1 of this administrative regulation;

(6) Beginning August 28, 2006, the maritime industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. Part 1918, revised as of July 1, 2006, relating to marine terminals, as modified by the definitions in Section 1 of this administrative regulation;

(7) Beginning August 28, 2006, the maritime industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. Part 1918, revised as of July 1, 2006, relating to safety and health regulations for longshoremen, as modified by the definitions in Section 1 of this administrative regulation; and

(8) Until midnight of August 27, 2006, the maritime industry shall comply with the occupational health and environmental controls requirements established at 29 C.F.R. Part 1918, revised as of July 1, 2006, relating to safety and health standards for longshoremen, as modified by the definitions established in Section 1 of this administrative regulation. [As modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with:

1. 29 C.F.R. Part 1918, revised as of July 1, 2005, relating to occupational health and environmental controls requirements for shipyard employment;
2. 29 C.F.R. Part 1918, revised as of July 1, 2005, relating to marine terminals;
3. 29 C.F.R. Part 1918, revised as of July 1, 2005, relating to safety and health regulations for longshoremen; and
4. 29 C.F.R. Part 1918, revised as of July 1, 2005, relating to gear certification.]

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: August 24, 2006
FILED WITH LRC: August 24, 2006 at 4 p.m.
CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 243.030(21), 243.200
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the transportation of alcoholic beverages. KRS 243.200 restricts the transportation of alcoholic beverages to those persons holding appropriate license. This administrative regulation establishes the requirements for through transportation.

Section 1. (1) A person wishing to transport distilled spirits and wine through the Commonwealth of Kentucky over the public highways shall apply for and receive a "through transporter's license" from the Office of Alcoholic Beverage Control. This license shall entitle the holder to transport distilled spirits and wine during the period of the license. The transporting of distilled spirits and wine without benefit of a through transporter's license shall subject the offending party to the penalties established in KRS 243.990.

(2) Application for a "through transporter's license" shall be made to the Office of Alcoholic Beverage Control, under oath, on Schedule "T" Transporter License (a form furnished by that office, and shall set forth in detail the same kind of information required of applicants for a transporter's license, and any additional information required by KRS 243.290 of the administrative regulation.) An application for a "through transporter's license" shall be accompanied by:

(a) A copy [Photostat] [Copy] of the applicant's state and federal permits; [[or
(2) Evidence that the applicant is a common carrier under regulations prescribed by the Interstate Commerce Commission]]; and
(b) A statement that the applicant shall [will] allow any authorized representative of the Office of Alcoholic Beverage Control, the Department of Revenue, or Kentucky State Police, to stop and examine the cargo of any truck or vehicle in which distilled spirits or wine is being transported within the boundaries of the Commonwealth of Kentucky.

(3) [Immediately] On approval, the license herein prescribed shall [may] be issued.

Section 2. (1) The driver of a vehicle so transporting shall be in the possession of:

(a) Bills of lading, consignment, or other evidence of ownership of the cargo which tally with the cargo; and
(b) A copy of the license.

(2) Failure of the driver to be in possession of these documents shall be prima facie evidence of illegal trafficking.

Section 3. Each applicant for a "through transporter's license" shall complete and submit to the Office of Alcoholic Beverage Control "Schedule T" Transporter License form incorporated by reference [as set forth in 804 KAR 4 410. Incorporation by Reference "Schedule T" Transporter License, 804 KAR 4 410, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

V. LAVOYED HUGDINS, Chairman
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA W. WILCHE, Secretary
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 18, 2006 at 9 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director or Virginia Davis, Resource Management Analyst III, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

804 KAR 4:230. Extended hours supplementary licenses.

RELATES TO: KRS 243.030(31), 243.050
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.050 establishes a new class of supplemental liquor licenses and authorizes the board by administrative regulation to set the necessary conditions and restrictions upon this class of license. This administrative regulation establishes the conditions and restrictions for extended hours [heur] supplementary licenses.

Section 1. Definition. "Prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplementary License.

Section 2. This administrative regulation establishes [There is hereby created] an Extended Hours Supplementary License for the retail sale of alcoholic beverages, distilled spirits, wine, and malt beverages by the drink. This license is divided into four (4) categories:

(1) The Convention Center Extended Hours Supplementary License;
(2) The Horse Race Track Extended Hours Supplementary License;
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(3) The Commercial Airport Extended Hours Supplemental License; and
(4) The Automobile Race Track Extended Hours Supplemental License.

Section 3. The supplemental licenses may be issued by the Distilled Spirits Administrator and Malt Beverage Administrator who, pursuant to KRS 243.050(5), shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, or the economic development of Kentucky or any part thereof.

Section 4. (1) The Convention Center Extended Hours Supplemental License may be issued to any facility which holds a convention center or convention hotel complex (Convention Center Caterers) license pursuant to KRS 243.050(4) [the provisions of 804-KAR 7.046]. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays [Sunday] 1 p.m. until prevailing time for weekday closing.

(2) The Horse Race Track Extended Hours Supplemental License may be issued to any horse race track licensed to conduct a race meeting under KRS Chapter 230 and which is the holder of a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.

(3) The Commercial Airport Extended Hours Supplemental License may be issued to any commercial airport through which 500,000 or more passengers arrive or depart annually and which holds a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be Monday through Saturday, prevailing opening time until 4 a.m., and Sundays, 1 p.m. until 4 a.m.

(4) The Automobile Race Track Extended Hours Supplemental License may be issued to any facility which holds an automobile race track license pursuant to the provisions of KRS 243.050(5) and has a seating capacity of at least 30,000 people. The hours of operation under this license shall be prevailing time for Monday through Saturday and Sunday 1 p.m. until prevailing time for weekday closing

Section 5. An Extended Hours Supplemental License shall not be issued to any applicant that [which] does not hold one (1) or more licenses authorizing the retail sale of distilled spirits and wine by the drink.

Section 6. Only one (1) Extended Hours Supplemental License shall be required for each licensed premises.

Section 7. The annual fee for the Extended Hours Supplemental License appears in KRS 243.030(30) [(34)-per-year] and shall be in addition to all other licenses and license fees due by the holder in connection with the retailing of alcoholic beverages.

Section 8. Application shall be made on forms incorporated by reference and each applicant shall furnish certification of qualification as the administrators may require on an individual basis.

Section 9. The holder of an Extended Hours Supplemental License may be required, from time to time, to furnish the administrators information as requested indicating continued qualification to hold the Extended Hours Supplemental License.

Section 9. [40.] Each applicant for an extended hours supplemental license shall complete and submit to the Office of Alcoholic Beverage Control the "ABC Basic" application incorporated by reference (a set forth in 804 KAR 4:400 and the "Schedule X" Airport, Convention Center, Convention Hotel, Automobile Race Track, Horse Race Track, Entertainment Destination Center Licensee) licensees' form as set forth in 804 KAR 4:410, [Incorporation-by-Reference—(4) "Extended hours supplemental licenses—Schedule X" (06242003)] as incorporation by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Alcoholic Beverage Control, 4003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

V. LAVOYED HUDGINS, Chairman
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

For LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: September 15, 2006
FILED WITH LRC: September 15, 2006 at 8 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director or Virginia Davis, Resource Management Analyst III, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

604 KAR 4:240. Registration of brands.

RELATES TO: KRS 241.060, 244.440
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 empowers the board to adopt reasonable administrative regulations governing the traffic in alcoholic beverages. KRS 244.440 requires that distillers, rectifiers, blenders or vinters and nonresident wholesalers having exclusive interest in any particular brand to be sold in the state to register those brands on a form provided by the office (department) in the name of the wholesaler distributing the brands. This administrative regulation establishes the specific form to be used for the registration.

Section 1. The Alcoholic Beverage Control Board prescribes the following form to be used for the registration of brands pursuant to KRS 244.440:

ABC Form 715 Distilled spirits and wine brand registration form
Incorporated by reference (a set forth in 804 KAR 4:410). [DISTILLED SPIRITS AND OR WINE BRAND REGISTRATION]

[Distilled spirits and or wine brand registration form]

Kentucky Department of Alcoholic Beverage Control

In compliance with KRS 244.440, we hereby register our brands listed herein which will be distributed by the following named Kentucky wholesaler(s):

Supplier:
Address:
Telephone Number:
Fax Number:
Name of Contact Person:
License Number (No.)
Authorized Signature:
Date:
Wholesaler:
Address:
Telephone Number:
Fax Number:
Name of Contact Person:
License Number (No.)
Authorized Signature:

BRAND NAME AND TYPE OR CLASS (All Current & New Brands) (Single-Space if Necessary):

BRAND NAME AND TYPE OR CLASS (All Current & New Brands) (Continue on Reverse)

Supersedes: File No. (of the last KY-ABC approved brand registration form)
Effective Date:
This File Now
Submit one (1) copy.

V. LAVOYED HUDGINS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary

For LAUJANA S. WILCHER, Secretary

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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

804 KAR 4:250. Special temporary licenses.

RELATES TO: KRS 243.260, 243.290
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.260 provides for the issuance of a distilled spirits and wine special temporary license or a special temporary wine license to any regularly organized fair, exposition, racing association or other party, "when, in the opinion of the board, a necessity therefore [therefore] exists."
KRS 243.290 provides for the issuance of a malt beverage special temporary license for any regularly organized fair, race or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars and carnivals subject to administrative regulations. This administrative regulation establishes application procedures and requirements for these special temporary licenses.

Section 1. All applications for special temporary licenses pursuant to KRS 243.260 or 243.290 shall be on forms provided by the Alcoholic Beverage Control Board and shall be filed with the board no later than five (5) working days prior to the date for which the license is requested.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 and 243.290 shall provide by a sworn affidavit supplemental information as the Alcoholic Beverage Control Board shall deem necessary for proper review of the application.

Section 3. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260 and 243.290, necessity, in the opinion of the board, shall limit applicants to: any regularly organized fair, exposition, racing association or nonprofit organization, political campaign function or any for-profit individual, corporation, or organization when used in conjunction with an organized charitable, civic, or community sponsored event.

Section 4. Each applicant for a special temporary license shall complete and submit to the Office of Alcoholic Beverage Control a Schedule "Temporary" License form incorporated by reference in 804 KAR 4:410 [Incorporation by Reference. (4) Special temporary license...].
An inspection of malt beverage establishments shall be conducted by the Alcoholic Beverage Control Board to ensure compliance with the provisions of the license.

Section 5. Malt beverages produced under this license shall:
(1) Be removed from the premises by the customer upon completion of bottling for personal or family use, or by the customer upon purchase of malt beverages for personal or household use;
(2) Not be sold or offered for sale by the customer.

Section 6. A licensee may produce malt beverages for personal or household use on the premises of the licensed "brew-on-premises" establishment [license]. The production of malt beverages shall not exceed:
(1) 100 gallons per year for a household with one (1) adult at least twenty-one (21) years of age in permanent residence;
(2) 200 gallons per year for a household with two (2) or more adults at least twenty-one (21) years of age in permanent residence.

Section 7. A license issued pursuant to this administrative regulation shall not be:
(1) A quota license as defined in KRS 241.010(2)(a); or
(2) Transferable to another premises.

Section 8. A licensed "brew-on-premises" establishment shall not be located in a dry territory as defined in KRS 241.010(2)(b)(24)).
Section 9. (1) The license fee for the brew-on-premises license appears in KRS 243.040(11), and the fee shall be prorated as set forth in KRS 243.090(2). A license shall expire on the last day of a month assigned to the licensee by the department under KRS 243.040 each year.

(2) Upon renewal, the licensee shall submit:
(a) Application form;
(b) Fee as established in subsection (1) of this section; and
(c) Report stating:
1. The number of customers that brewed malt beverages at the licensed establishment during the preceding year; and
2. The total number of gallons brewed during the preceding year.

Section 10. The "brew-on-premises" licensee shall maintain records on customers and gallons brewed for at least two (2) years. Records shall be kept on the premises of the licensed establishment and shall be subject to inspection by the Office [Department] of Alcoholic Beverage Control for compliance with provisions of this administrative regulation.

Section 11. The hearing process for a violation of this administrative regulation shall be controlled by KRS Chapter 13B.


(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

V. LAVOYED HUDGINS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 15, 2006 at 9 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 243.040(12) and (15), 243.360
STATUTORY AUTHORITY: KRS 241.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.020(1) and 243.040(12) and (15) require [requires] that an out-of-state brewer obtain a license for the sale of a malt beverage to a Kentucky distributor. This administrative regulation establishes the requirements for licensing.

Section 1. (1) An out-of-state brewer, distributor, importer for a brewer, or importer of a non-U.S. brand of malt beverage may obtain a license for importing a malt beverage into Kentucky if it is:
(a) Licensed to do business in the state in which it is located; and
(b) Registered with the Kentucky Revenue Cabinet.

(2) An entity listed in subsection (1) of this section, who wishes to import more than 25,000 barrels or 775,000 gallons of malt beverage shall:
(a) Apply for an out-of-state brewer [brewer's] license on an application provided by the cabinet;
(b) Submit documentation required by the application; and
(c) Pay the fee required by KRS 243.040(12).

(3) An entity listed in subsection (1) of this section, who wishes to import less than 25,000 barrels or 775,000 gallons of malt beverage shall:
(a) Apply for a limited out-of-state brewer [brewer's] license on an application provided by the office [department];
(b) Submit documentation required by the application; and
(c) Pay an annual fee required by KRS 243.040(15).

Section 2. Pursuant to KRS 243.360(1) an out-of-state applicant shall be exempt from the notice requirements of KRS 243.360.

Section 3. Each applicant for an out-of-state brewer license shall complete and submit to the Office of Alcoholic Beverage Control a "Schedule A" Application as set forth in 804 KAR 4:410 and the "Schedule M" Manufacturer and Producer License form incorporated by reference (as set forth) in 804 KAR 4:410 [incorporated by reference]. (1) ABC-Schedule M, an "Out-of-State Brewer's License," is hereby incorporated by reference. (2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

V. LAVOYED HUDGINS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 15, 2006 at 9 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

804 KAR 4:380. Small farm winery license [application and operations] [Farm and small winery functions].

STATUTORY AUTHORITY: KRS 241.060 [243.090(44)], 243.155(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.155 authorizes the issuance of a small farm winery license. This administrative regulation establishes the requirements for the license, [functions of a small farm winery operations]. This administrative regulation establishes the application and operations requirements for those licenses.

Section 1. An applicant for a small farm winery license shall submit a complete, accurate, and verifiable application form on form "ABC Basic" application for alcoholic beverages licenses incorporated by reference (as set forth) in 804 KAR 4:410 and ABC Schedule M Manufacturer and Producer License (Related Licenses), incorporated by reference (as set forth) in 804 KAR 4:410.

Section 2. In addition to the requirements established in Section 1 of this administrative regulation, in order to document annual wine production, each applicant shall submit a copy of the report forms filed by the applicant, pursuant to 27 C.F.R. 24.300(a), for the prior two (2) years with any application for a new or renewal small farm winery license.

Section 3. [Each-off-premises-retail-site-authorized-under-KRS]
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243.156(2) shall be separately licensed. A licensee shall be prohibited from selling any alcoholic beverages at an off-premises retail sitio other than what was manufactured or bottled by a small farm winery-licensee.

Section 41. A small farm winery licence shall be a nonquota license and shall not be transferable to any other winery. All applications for farm and small winery licenses pursuant to KRS 243.155 and 243.156 shall be on forms provided by the Alcoholic Beverage Control Board. An application for license shall provide by sworn affidavit supplemental information, as the Alcoholic Beverage Control Board shall deem necessary for proper review of the application.

Section 2. The annual license fee for the small winery license is provided in KRS 243.030(5). The annual license fee for the small winery off-premises retail sitio is provided in KRS 243.030(5)(a). The annual license fee for the farm winery license is provided in KRS 243.030(24). The annual license fee for the farm winery off-premises retail sitio license is provided in KRS 243.030(24)(c). All licensees in this section shall be prorated in the manner specified in KRS 243.090(2). All licensees in this section shall expire at midnight on the last day of the renewal month as designated by the board when the license is issued.

Section 3. The license type described in Section 2 of this administrative regulation shall not be quota licensee, and they shall not be transferable to any other premises.

Section 4. The holder of all license type issued in Section 2 of this administrative regulation shall be subject to the restrictions and prohibitions contained in KRS Chapters 243 and 244 except as otherwise stated in KRS 243.166 and 243.168.

Section 5. The holder of a farm or small winery license shall be prohibited from obtaining alcoholic beverages from any out-of-state entity.

Section 6. The holder of a small winery license shall be prohibited from obtaining any grapes, grape juice, other fruit, other fruit juice, or honey not produced in Kentucky without first obtaining the written approval of the distilled spirits administrator. The approval shall not be granted unless the licensee can demonstrate that grapes, grape juice, other fruits, other fruit juice, or honey are not available from any other source within the Commonwealth of Kentucky. The licensee shall first provide written documentation from the Department of Agriculture that these products are not available from any other source within the Commonwealth of Kentucky if the Distilled Spirits Administrator concludes that the documentation submitted is sufficient, then written approval may be granted to the licensee for a period no longer than six (6) months. At the end of six (6) months, any written approval from the distilled spirits administrator shall automatically expire. If the licensee desires an extension of time, the licensee shall reapply to the distilled spirits administrator for another written approval.

Section 7. Before any election is held, pursuant to KRS 243.165(2) and 243.166(4), the winery shall first have obtained a small farm winery license from the Department of Alcoholic Beverage Control pursuant to KRS 243.030, 243.030, and 243.390. The form of proposition for the limited sale-procinct election shall be: "Are you in favor of the sale of wine at the (name of the licensed winery or winery)?".

Section 8. Each off-premises retail sitio authorized under KRS 243.166(1) or 243.166(2) shall be separately licensed. Licensees shall be prohibited from selling any alcoholic beverages other than what was manufactured from the premises of their small farm winery premises.

Section 9. Incorporation by Reference. (1) "Farm and small winery functions—Schedule M" (06/24/2003) is incorporated by reference.

(just-to-applicable-copyright-law,...at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601; Monday through Friday, 8 a.m. to 4:30 p.m.)

V. LAVOYED HUDGINS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 15, 2006 at 9 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director and Virginia Davis, Resource Management Analyst III, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4830, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at AR33, November 14, 2006)

801 KAR 4:385. Using the word "Kentucky" on wine labels prohibited; exceptions.

RELATES TO: KRS 244.230, 244.235
STATUTORY AUTHORITY: KRS 241.060, 244.230, 244.235
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing the supervision and control of the sale, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. This administrative regulation establishes a mechanism to monitor compliance with KRS 244.235.

Section 1. For the purpose of assuring compliance with KRS 244.235, when the word "Kentucky" is used on the label or any bottle of wine, pursuant to KRS 243.165(4), the Office of Alcoholic Beverage Control may conduct product integrity investigations by reviewing documentation to determine the origin of the wine.

Section 2. A licensee manufacturing wine that includes the word "Kentucky" on the label or bottle in accordance with KRS 244.235, shall keep and maintain records in accordance with KRS 244.150 and federal requirements sufficient to establish that seventy-five (75) percent of the grapes, grape juice, other fruits, other fruit juices, and honey used in making the wine were produced in Kentucky. If any portion of the final product to be sold originated from another producer and was blended into the wine produced, the records shall include documentation from sending producers sufficient to establish the origin of the wine.

Section 3. Prior to using the word "Kentucky" on any label or bottle of wine, the manufacturer shall submit a copy of its federal ["FCLAT"] certificate of label approval, or "COLA", required by 27 C.F.R. 4.50, to the Office of Alcoholic Beverage Control.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
V. LAVOYED HUDGINS, Chairman
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 15, 2006 at 9 a.m.
CONTACT PERSON: Laura Moore, Deputy Executive Director, and Virginia Davis, Resource Management Analyst III, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4830, fax (502) 564-1442.
ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

804 KAR 4:400. ABC basic application form incorporated by reference.

RELATES TO: KRS 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. This administrative regulation prescribes the basic form to be used to apply for an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Office of Alcoholic Beverage Control the "ABC Basic" application form, with the exception of applicants for:
(1) Agent's Solicitor's (a) Special agents or solicitors of distilled spirits and wine, out-of-state broker, out-of-state microbrewer, and [microbrewers]; beer Importer (importers) license;
(2) Special temporary license; and
(3) Transporter's (a) Transporter's license.

Section 2. In addition to the "ABC Basic" application form set forth in Section 1 of this administrative regulation, an applicant (applicant) applying for an alcoholic beverage license shall complete and submit to the Office of Alcoholic Beverage Control an "ABC Schedule" form for the [a] specific license type for which he is applying. The schedules are listed and incorporated by reference [type(s) as set forth] in 804 KAR 4.410.

Section 3. Incorporation [Incorporated] by Reference. (1) The "ABC Basic" application form, [01/01/07], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) The application is [shall also [be]] available on the authority's Web site, [www.abc.ky.gov] [www.http://abc.ky.gov].

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
V. LAVOYED HUDGINS, Chairman
APPROVED BY AGENCY: September 14, 2006
FILED WITH LRC: September 15, 2006 at 9 a.m.
CONTACT PERSON: Laura Moors, Deputy Executive Director, and Virginia Davis, Resource Management Analyst, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Office of Alcoholic Beverage Control
(As Amended at ARRS, November 14, 2006)

804 KAR 4:410. ABC schedules and forms incorporated by reference.

RELATES TO: KRS 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference the schedules and forms to be used to apply for specific license types.

Section 1. In addition to the "ABC Basic" application form incorporated by reference [as set forth] in 804 KAR 4:400, an [each] applicant applying for an alcoholic beverage license shall complete and submit to the Office of Alcoholic Beverage Control the schedule or form for the specific license type for which he is applying. The schedules and forms are listed below [one (1) of the following]:
(1) Schedule "A" Agent's, [and] Solicitor's [of Distilled Spirits and Wine], Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License;
(2) Schedule "B" Beer Retail [Retailer] Only License;
(3) Schedule "F" Food Related License;
(4) Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vendor License;
(5) Schedule "L" Limited 70% Food Restaurant and Golf Course Voted Wet by Special Election License;
(6) Schedule "M" Manufacturer and Producer License;
(7) Schedule "R" Retail License;
(8) Schedule "S" Storage and Warehouse License;
(9) Schedule "S/R" Special Retail Sales; Hotel, Private Club, Riverboat, and Rail & Airline [Airline] License;
(10) Schedule "T" Transporter License;
(11) Schedule "Temporary" License;
(12) Schedule "Transitional" License;
(13) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License;
(14) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License;
(15) "ABC Form 714" Beer Brand Registration; and
(16) "ABC Form 715" Distilled Spirits and Wine Brand Registration.

Section 2. Incorporation [Incorporated] by Reference. (1) The following material is incorporated by reference:
(a) Schedule "A" Agent's, [and] Solicitor's [of Distilled Spirits and Wine], Out-of-State Brewer, Out-of-State Microbrewer, and Beer Importer License, [01/01/07];
(b) Schedule "B" Beer Retail [Retailer] Only License, [01/01/07];
(c) Schedule "F" Food Related License, [01/01/07];
(d) Schedule "I" Industrial Alcohol and Nonbeverage Alcohol Vendor License, [01/01/07];
(e) Schedule "L" Limited 70% Food Restaurant and Golf Course voted wet by special election License, [01/01/07];
(f) Schedule "M" Manufacturer and Producer License, [01/01/07];
(g) Schedule "R" Retail License, [01/01/07];
(h) Schedule "S" Storage and Warehouse License, [01/01/07];
(i) Schedule "S/R" Special Retail Sale; Hotel, Private Club, Riverboat, and Rail & Airline License, [01/01/07];
(j) Schedule "T" Transporter License, [01/01/07];
(k) Schedule "Temporary" License, [01/01/07];
(l) Schedule "Transitional" License, [01/01/07];
(m) Schedule "W" Liquor and Wine Wholesaler and Beer Distributor License, [01/01/07];
(n) Schedule "X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License, [01/01/07];
(o) "ABC Form 714" Beer Brand Registration, [01/01/07]; and
(p) "ABC Form 715" Distilled Spirits and Wine Brand Registration, [01/01/07].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) The applications are [shall also [be]] available on the office's Web site, [http://www.abc.ky.gov].

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
V. LAVOYED HUDGINS, Chairman
APPROVED BY AGENCY: September 14, 2006
804 KAR 4:420. Small farm winery wholesaler license application forms.

RELATES TO: KRS 243.030(6), 243.030(43), 243.154 [243.264]

STATUTORY AUTHORITY: KRS 241.060 NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.154 establishes the activities authorized by a small farm winery wholesaler's license. This administrative regulation describes the forms to be used to apply for a small farm winery wholesaler license. [KRS 243.264]

Section 1. An applicant [each person(s) or entity(s) applying] for a small farm winery wholesaler license described [as set forth] in KRS 243.154 [243.264] shall complete and submit to the Office of Alcoholic Beverage Control the "ABC Basic" application [incorporated by reference as set forth] in 804 KAR 4.400 and the "Schedule W" Wholesaler and Distributor License form [incorporated by reference as set forth] in 804 KAR 4.410.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
V. LAVOYED HUDGINS, Chairman

APPROVED BY AGENCY: September 14, 2006
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CONTACT PERSON: Laura Moore, Deputy Executive Director and Virginia Davis, Resource Management Analyst III, Office of Alcoholic Beverage Control, Office of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-1442.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, November 14, 2006)

805 KAR 8:060. Criteria for the Imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.1041, 351.175, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4) NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet [Commissioners of the Department of Mines and Minerals] to promulgate administrative regulations [the deems] necessary and suitable for the proper administration of KRS Chapter 351 [361.090 to 361.990]. KRS 351.025(2) requires the Department for Natural Resources [of Mines and Minerals] to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of Kentucky [41-an owner or part-owner intentionally orders] mine safety laws [be violated] that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) requires the imposition of civil monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.180. This administrative regulation establishes the criteria for the revocation, suspension, or modification of a mine's license, and the imposition of civil monetary penalties against a licensed premises [upon an adjudication by the Mine Safety Review Commission that an owner or part owner of a licensed premises has intentionally ordered this type of violation].

Section 1. Definitions. (1) "First offense" means the first violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including [but not limited to] failure to comply with the reporting requirements set forth in KRS 351.1010(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(2) "Licensed facility" or "licensed premises" means "license," as defined by [shall have the same meaning as the term] "license" as that term is defined in KRS 351.010(1)(m) and 352.010(1)(j).

(3) "Licensed premises" shall have the same meaning as the term "license" as that term is defined in KRS 351.010(1)(m) and 352.010(1)(j).

(4) "Mine ventilation plan" means the ventilation plan, including any revisions and any revision to the mine ventilation plan approved by the United States Mine Safety and Health Administration.

(5) "Related successor" means an entity that obtains a license for a mine, if [whenever] that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for the same mine or location that is owned by one (1) or more owners or part-owners of a previous licensee at the same location.

(6) "Second offense" means the second violation by a licensed premises of a mine safety law which places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including [but not limited to] failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(7) (1) Subsequent offense means any violation beyond the third offense by a licensed premises of a mine safety law which places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including [but not limited to] failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws. (1) If [an owner or part-owner of a] licensed premises violates any mine safety law which places a miner in imminent danger of serious physical injury or death, which is [seems to be] a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may place the licensed premises on probation for a period of time to be determined by [at the discretion of] the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case. The commission may also impose a civil monetary penalty against
the licensed premises to not exceed the gross value of the production of the licensed premises for up to ten (10) working days. In accordance with the factors established in KRS 351.194(7).

(2) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose a license for the probation period, and it may impose civil penalties for the violation of the terms of probation, including the suspension or revocation of the mine's license. If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3) The department may file charges against a licensed premises for any alleged violation of its probationary terms. Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety and Licensing Commission, pursuant to KRS 351.194.

(4) If an owner or part-owner of a licensed premises violates any mine safety law which places a miner in imminent danger of serious physical injury or death which is [serious] a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the license shall be suspended or revoked for a period of not less than two (2) calendar years, up to and including revocation for a greater period of time, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the facts of the case. The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194.

(5) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension. If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its license at the end of the revocation period. The Office of Mine Safety and Licensing may grant or deny the application. The office shall [may] grant the application only if the licensed premises is in full compliance with any orders of the Mine Safety Review Commission and KRS 351.175. If a third offense is committed by an owner or part-owner of a licensed premises, the commission may impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(6) If a licensed premises commits a violation of any mine safety law which results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case. The commission may impose civil monetary penalties against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).
(a) The commissioner or his or her designee may place a copy of the notice of proposed assessment in an envelope, and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include therein the fact of mailing and the return receipt, when received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. Service by certified mail shall be [a] complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the license address; upon refusal to accept by any person at the licensee address, under the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee; or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment.

(b) The commissioner or his or her designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment

(a) Waiver The licensed facility issued a notice of proposed assessment may choose not to contest the assessment. Failure to file a petition pursuant to subpara (b) of this subsection shall be considered [deemed] a waiver. [fand] A final order shall be entered by the Mine Safety Review Commission finding that:

1. The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment; [fand]
2. The fact of the violation cited in the noncompliance or closure order is deemed admitted; [fand]
3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and
4. [Fand] The violation is a first, second, third or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for an administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1.020.

(5) Nothing contained within this section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the imposition and enforcement of sanctions against licensed facilities for failure to comply with the requirements for reporting an accident. (1) General. If [Whenever] the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements set forth in KRS 352.1801, the Mine Safety Review Commission may revoke, suspend or revoke the mine license for a period of time to be determined by [at the discretion of] the commission, pursuant to KRS 351.194(5), and In proportion to the seriousness of the violations and the facts of the case. The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than $100,000 for the failure.

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence provided by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty [Size of the mine, Up to fifteen (15) points shall be assigned for the size of the mine. The size of the mine based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one full calendar year, the tonnage operated on an annual basis. Points shall be assigned as follows:
1. 0-500,000 tons, zero (0) points,
2. 1,000,000-500,000 tons, five (5) points,
3. 500,000-1 million tons, ten (10) points,
4. Over 1 million tons, fifteen (15) points.
(b) History of previous violations. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period. Points shall be assigned as follows:
1. 1-5 previous violations, zero (0) points,
2. 6-10 previous violations, ten (10) points,
3. 11-20 previous violations, ten (10) points,
4. 21-30 previous violations, fifteen (15) points,
5. Over 30 previous violations, twenty (20) points.
(c) Negligence. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident. Points shall be assigned as follows:
1. No negligence. There shall be [is] no negligence on the part of the licensee if [when] it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence.
2. Negligence. There shall be [is] negligence if [when] the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence.
3. Reckless disregard. There shall be [is] reckless disregard if [when] the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty-five (25) points shall be assigned for reckless disregard.
(d) Gravity. Gravity shall be [is] the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements. A total of thirty (30) points shall be assigned for gravity. Points shall be assigned as follows:
1. Seriety. Up to twenty (20) points shall be assigned as follows for the severity of any injuries:
   a. No serious physical injury occurred, zero points,
   b. A serious physical injury occurred, ten (10) points,
   c. A fatality occurred, twenty (20) points.
2. Persons at risk of serious physical injury or death. Up to twenty (20) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements. Points shall be assigned as follows:
   a. No person was at risk, zero points,
   b. Persons were at risk, ten (10) points.
3. Determination of amount of penalty. The Mine Safety Review Commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in Appendix A of this administrative regulation.

(4) Waiver of use of point system to determine civil penalty. (a) The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the record of the case.

(b) If the commission waives the use of the point system, it shall use the criteria set forth in KRS 351.194(7) to determine the appropriate penalty. If [When] the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation of Reference. (1) "Notice of Proposed Assessment." July 12, 2006. OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

APPENDIX A

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TERESA J. HILL, Secretary
APPROVED BY AGENCY: October 9, 2006
FILED WITH LRC: October 11, 2006 at 1 p.m.
CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0104, fax (502) 573-0152.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Mine Safety Review Commission
(As Amended at ARRS, November 14, 2006)

825 KAR 1:020. Administrative hearings procedures.

RELATES TO: KRS Chapter 13B, 351.025(1), (2), (5), 351.070(15), 351.104(1), (7), (8), 351.105(11), 351.1120, 351.184, 351.194.

STATUTORY AUTHORITY: KRS 351.194(1), KRS 351.025(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.194(1) and KRS 351.025(5) require [requires] the Mine Safety Review Commission to promulgate administrative regulations to establish administrative hearing and review procedures in accordance with KRS Chapter 13B. The administrative regulation supplements the provisions of KRS Chapter 13B by establishing procedures for the filing, evaluation, and disposition of complaints and petitions of appeal.

Section 1. [Except as provided in Sections 2 through 26 of this administrative regulation.] The provisions of KRS 13B.010 through 13B.170 and this administrative regulation shall govern all hearings conducted pursuant to KRS 351.104(1)(a) and KRS 351.025(5).

Section 2. Practice Before the Commission. (1) The hearing shall be adversarial and presided over by a hearing officer assigned by the commission, which may include a member of the commission or an independent hearing officer, who shall conduct the hearing in accordance with KRS 13B.050 to 13B.130. If [When] a complaint is filed by the Office of Mine Safety and Licensing, the charges and evidence against the respondent shall be filed by an attorney from the Natural Resources Legal Division of the Office of Legal Services, Environmental and Public Protection Cabinet. If [When] a petition of appeal is filed by an individual or licensee, an attorney for the Natural Resources Legal Division of the Office of Legal Services shall represent the Office of Mine Safety and Licensing. The charges and evidence against the respondent shall be presented by the prosecuting attorney from the Department of Mines and Minerals.

(2) An individual may file a petition of appeal or a response to a complaint proceeding. In accordance with S.C.R. 3.020, all other parties or respondents shall be represented by an attorney admitted to practice law in the Commonwealth of Kentucky. [The respondent may appear pro se or by counsel.]

(3) [Attorneys admitted to practice law in the Commonwealth of Kentucky may practice before the commission.]

(4) Entry of Appearance. A representative of a party shall enter an appearance in a proceeding under this administrative regulation [these rules] by:

(a) Signing the first document filed with the commission on behalf of a party;

(b) Filing a written entry of appearance with the commission; or

(c) With the permission of the hearing officer, orally entering an appearance in open hearing.

(4) [Entry of Appearance. A representative desiring to withdraw his appearance shall file a motion with the commission. The motion to withdraw may, in the discretion of the hearing officer, be denied if necessary to avoid undue delay or prejudice to the rights of a party.]

Section 3. Parties, Interveners, and Amici Curiae. (1) Party status. A person named as a party, or permitted to intervene, is a party. For the purposes of KRS 13B.140(1), the agency named as a party for an appeal of a final disposition from the Mine Safety Review Commission is the Office of Mine Safety and Licensing.

(2) Intervention. The procedure for intervention shall be governed by the provisions of KRS 13B.060. In denying a motion to intervene, the hearing officer may permit the movant to participate in the proceeding as an amicus curiae.

(3) Participation as amicus curiae. A person may move to participate as amicus curiae in a proceeding before the commission. Participation as amicus curiae shall not be a matter of right, but of the sound discretion of the hearing officer. A motion for participation as amicus curiae shall set forth the interest of the movant and show that granting the motion will not unduly delay or prejudice the adjudication of the issues. If the hearing officer permits amicus curiae participation, his order shall specify the schedule for filing and replying to the amicus curiae memorandum, brief, or other pleading. The movant may attach its memorandum, brief, or other pleading to its motion for participation as amicus curiae.

Section 4. Commencement of Action or Petition of Appeal. (1) An action shall be instituted by the Office of Mine Safety and Licensing by filing with the commission a verified complaint which shall contain the following information:

(a) The name, address, and license number or certification identification of the alleged violator;

(b) If the alleged violator is a corporation, the address and license number of the corporation and the name and address of the person agent;

(c) The section of the statutes or administrative regulations alleged to have been violated and the minimum and maximum penalties provided for the violation;

(d) A statement of the factual basis for the department's action and a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and arguments;

(e) The history of the alleged violator's previously adjudicated violations before the commission or its predecessor;

(f) Any supporting documents addressed in the statement; and

(2)(a) The following individuals or licensed facility may file a petition for review of the suspension issued, certification denied, application rejected or denied, or penalty assessed:

1. Any individual whose certification issued pursuant to KRS 351.120(1) has been suspended by the Commissioner of the Department for Natural Resources pursuant to KRS 351.120(12) for violation of drug or alcohol-free status or refusal to submit to a drug or alcohol test as authorized by statute;

2.1 Any applicant for certification as a new miner or initial applicant for all other job certifications authorized by statute who is denied certification by the Office of Mine Safety and Licensing due to the results of drug and alcohol testing pursuant to KRS 351.184; and

3.1 Any licensee or license applicant whose application for certification of a drug-free workplace program has been rejected or
denied pursuant to 805 KAR 11:010 or 805 KAR 11:020; or
4.1-or Any licensed facility against whom penalties have been assessed by the Commissioner of the Department of Natural Resources pursuant to KRS 351.070(15).

(b)1. The parties file a petition of appeal for review of the suspension issued, certification denied, application rejected or denied, or permit application denied or permit issued, (or a portion thereof) of appeal shall be filed within thirty (30) days of service of the notice of suspension by the Commissioner of the Department of Natural Resources, the notice of results of testing resulting in denial of certification by the Office of Mine Safety and Licensing, the notification of rejection or denial of the application for certification of a drug-free work program by the Office of Mine Safety and Licensing, or the notice of assessment of penalties by the Commissioner of the Department of Natural Resources. 2. The petition of appeal shall include:

(a) A statement of the law and facts in issue in regard to the suspension or denial of certification, rejection or denial of the application, or assessment of penalties; and
(b) A statement of the party's position as to the law and facts and a recitation of the relief sought by the party.

(c) For any person seeking appeal from (2) above or any other authorized appeal of action by the Office of Mine Safety and Licensing, the petition of appeal shall be filed with the Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky. At the time of filing, the complaint or petition of appeal shall be assigned a case number, which shall be used in the future proceedings of the matter.

(f)1. Time for Filing. No petition for review of any provision of the regulations shall be filed and no petition for appeal shall be deemed timely filed if it is received by the commission within the time specified for filing except that a petition for appeal shall be deemed timely filed if it has been transmitted by United States registered or certified mail, or by the party's attorney, to the commission within the time allowed for filing, if it is postmarked on the date specified for filing.

Section 5. Probable Cause Hearing; Notice of Hearing. (1) Upon receipt of a verified complaint filed by the Office of Mine Safety and Licensing, the commission shall place the complaint on its agenda for a probable cause hearing to be reviewed at the next regularly-scheduled meeting of the commission, or as soon as practicable.

(a) The probable cause hearing shall not be adversarial in nature. Testimonial evidence shall not be taken. The determination of probable cause shall be based upon the content of the verified complaint alone.

(b) If the commission finds that probable cause exists, it shall issue an order in accordance with KRS 351.194(5).

(c) The commission shall dismiss a complaint if it does not find probable cause that a violation has occurred. The dismissal shall be without prejudice. The commission shall notify the Commissioner and attorney of record for the party to the complaint.

(d) If an order setting the matter for hearing is issued by the commission, it shall mail a notice of hearing to the following:

(a) The Commissioner of the Department for Natural Resources [Department of Mines and Minerals];
(b) The attorney of record [General Counsel] for the Natural Resources Legal Division of the Office of Legal Services [Department of Mines and Minerals]; and
(c) The respondent named in the verified complaint at the address shown in the complaint.

(2) The notice of hearing shall be sent by certified mail, return receipt requested, in compliance with KRS 138.050.

Section 6. Notice of Hearing Regarding Petition of Appeal. (1) Upon receipt of a petition of appeal, the commission shall set the matter for hearing unless the petition is deemed by the commission to be:

(a) Not well grounded in fact or warranted by existing law or a good faith argument for the extension of same;
(b) Filed for an improper purpose or
(c) Frivolous.

(2) The commission shall mail a notice of hearing to the following:

(a) The petitioner or counsel for the petitioner, if the petitioner is represented by counsel; and
(b) The General Counsel for the Natural Resources Legal Division of the Office of Legal Services.

(3) The notice of hearing shall be sent by mail, return receipt requested, in compliance with KRS 138.050. [Code of Conduct: The commissioners shall adhere to the Judicial Code of Conduct as required by KRS 351.1041(6).]

Section 7. Answer of the Respondent. (1) The respondent shall file a response to the complaint with the commission within twenty (20) days of receiving the notice of hearing. The response shall:

(a) Set forth the defense to the complaint;
(b) State mitigating circumstances; and
(c) Admit or deny each and every charge in the complaint; or
2. [1-] If appropriate, state that the respondent is without knowledge or information sufficient to form a belief as to the truth of an assertion, this statement, and 2. A statement under subparagraph 1 of this paragraph shall be treated as a denial.

The Natural Resources Legal Division of the Office of Legal Services shall file a response to a petition for appeal with the commission, with service on the petitioner, within twenty (20) days of service of the notice of hearing. The response shall:

(a) Set forth the defenses to the petition; and
(b) Admit or deny each factual assertion in the petition, or
2. [1-] If appropriate, state that the respondent to the petition is without knowledge or information sufficient to form a belief as to the truth of the assertion. This statement, and 2. A statement under subparagraph 1 of this paragraph shall be treated as a denial.

Copies shall be mailed to the Commissioner and general counsel of the Department of Mines and Minerals.

Section 8. General Requirements for Pleadings and Other Documents. (1) Where to file. The original copy of all documents shall be filed with the commission. Documents filed with the commission shall be addressed to the general counsel and mailed or delivered to the Mine Safety Review Commission, 132 Brighton Park Blvd., Frankfort, Kentucky 40601. Copies shall be sent to all parties in a case, and to the hearing officer assigned to the case.

(a) The filing of complaints, petitions of appeal, or any initiating documents shall be by personal delivery, including courier service or by registered or certified mail, return receipt requested.

(b) Subsequent documents filed with the commission may be filed by first class mail, express mail, facsimile transmission, or personal delivery. Express mail includes delivery by a third-party commercial carrier.

(c) Filing by personal delivery, mail, or facsimile transmission, is effective upon receipt, except as otherwise permitted in Section 40(6) of this administrative regulation [hereinafter].

(d) A document filed by facsimile transmission shall be placed in the United States mail on the same day as transmission.

(2) Required Information.

(a) Documents shall be legible and shall clearly identify the filing party by name on the cover page.

(b) Documents filed with the commission shall be accompanied by a statement setting forth the date and manner of service.

(c) Documents shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of a change in the address or telephone number shall be given promptly to the commission, the hearing officer, and all other parties.

(3) Number of copies. The original document and four (4) copies shall be filed with the commission.

Section 9. Computation of Time. In computing a period of time prescribed by this administrative regulation, the day from which the designated period begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or
state holiday, in which event the period runs until the end of the next business day.

Section 10. Extensions of Time. (1) The time for filing or serving a document may be extended for good cause shown. A motion requesting an extension of time shall be received no later than thirty (30) days prior to the expiration of the time allowed for filing or serving the document.

(2) An extension of time may be granted even though the request was filed after the designated time for filing has expired if:
(a) Exigent circumstances exist; and
(b) The requesting party shows, in writing, the reason for the party’s failure to make the request before the prescribed time expired.

Section 11. Motions. (1) An application for an order shall be by motion which, unless made during a hearing or a prehearing conference, shall be made in writing and shall set forth the relief or order sought.

(2) A party opposing a written motion shall file a statement in opposition within ten (10) calendar days after service upon the party. Unless otherwise ordered, oral argument on motions shall [will not be heard.

Section 12. Withdrawal of a Pleading. A party may withdraw a pleading at any stage of a proceeding with the approval of the commission or a hearing officer.

Section 13. Consolidation of Proceedings. The commission or a hearing officer may, upon their own or a party’s motion, order the consolidation of proceedings that involve similar issues.

Section 14. Hearing Sites. Each case shall be assigned a hearing site by order of the Hearing Officer giving due regard to: (1) The convenience and necessity of the parties or their representatives and witnesses; (2) The availability of suitable hearing facilities; and (3) Other relevant factors.

Section 15. Prehearing Conferences. Prehearing conferences shall be conducted in accordance with KRS 13B.070.

Section 16. Powers of Hearing Officers. A hearing officer is empowered to act in accordance with the provisions of KRS Chapter 13B.

Section 17. Discovery. Discovery shall be conducted in accordance with KRS 13B.080(3).

Section 18. Failure to Cooperate in Discovery. Upon the failure of any person, including a party, to respond to a discovery request, or upon an objection to such a request, the party seeking discovery may file a motion with the hearing officer requesting an order compelling discovery pursuant to KRS 13B.080(3). For good cause shown the hearing officer may excuse an objecting party from complying with the request.

Section 19. Subpoenas. (1) The commission and its hearing officers may issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence.

(2) A subpoena may be served by a person at least eighteen (18) years of age. A subpoena may also be served by registered or certified mail, return receipt requested, with risk of delivery on the serving party.

(3) A copy of the subpoena bearing a certificate of service shall be filed with the commission.

(4) A subpoena shall be enforced in accordance with KRS 13B.080(3).

(5) If a person fails to comply with an order to testify or with a subpoena issued by the commission, the commission may initiate proceedings for the enforcement of the subpoena pursuant to KRS 13B.080(3).

(6) The person requesting the subpoenas shall bear the cost of serving the subpoenas. The commission shall bear the cost of witnesses subpoenaed on its behalf.

Section 20. Continuance; Proceedings in Absentia. The commission shall not postpone a case which has been scheduled for hearing, absent good cause. A request for a continuance may be considered if communicated to the commission staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer.

Section 21. Settlement by Informal Proceedings. (1) In accordance with KRS 13B.070(3), the commission, through counsel may, at any time during the action, enter into informal proceedings with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order of settlement shall be signed by the parties and filed with the commission for final decision.

(3) The commission may employ mediation as a method of resolving the matter informally.

Section 22. Rules of Evidence. (1) Receipt of evidence shall be governed by the provisions of KRS 351.194(3) and 13B.090.

(2) Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the commission is satisfied of its genuineness and accuracy.

(3) A tangible item may be received into evidence without the necessity of establishing a technical chain of custody if the board is satisfied that the item is:
(a) What it is represented to be; and
(b) In substantially the same condition as it was at the time of the events under consideration.

(4) The commission shall exclude evidence it considers to be unreliable, incompetent, irrelevant, immaterial, or unduly repetitious.

Section 23. Retention of Exhibits. Retention of exhibits shall be in accordance with KRS 13B.130. The commission or the hearing officer may permit the withdrawal of original exhibits:
(1) Prior to the conclusion of the hearing;
(2) Upon request and after notice to the parties; and
(3) If true copies are substituted, if practical, for the originals.

Section 24. Proposed findings, conclusions, and orders shall be made in accordance with KRS 13B.090.

Section 25. The commission shall make a decision that constitutes the final disposition of the proceedings in accordance with KRS 133.120. If a decision is announced orally it shall be reduced to writing. An order by the commission approving a settlement proposal is a final decision of the commission.

Section 26. Ex Parte Communications. Prohibited ex parte communications shall be in accordance with [are established in] KRS 13B.100

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: July 5, 2006
FILED WITH LRC: July 12, 2006 at 8 a.m.
CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 216B 010-216B.130, 216B.455, 216B 990(2)
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130([2004-726])

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis [Economic Analysis Bureau] [Bureau of Economic Analysis] [Bureau of Economic Analysis] [Office of Economic Analysis], price index [price index] (for fixed investment for personal consumption expenditures) shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index [base] for the twelve (12) month period ending December 31, 2005 [2004], represents 8.74% (4.06%) percent increase.

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be $2,380,123 ($2,477,866).

(2) The major medical equipment minimum established in KRS 216B 015(16) shall be $2,380,123 ($2,477,866).

SHANE O’DONLEY, Division Director
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWELL, Secretary
APPROVED BY AGENCY: September 5, 2006
FILED WITH LRC: September 8, 2006 at 10 a.m.
CONTACT PERSON: Jit Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Administration and Financial Management
(As Amended at ARRS, November 14, 2006)

907 KAR 1:011. Technical eligibility requirements.


STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2), 205.6481-205.6497, 42 U.S.C. 1397aa

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726], effective July 2, 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, department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid program.

Section 1. Definitions. (1) * ‘Cabinet’ means the Cabinet for Health and Family Services.

(2) * ‘Child’ means a person who:
(a) is under the age of eighteen (18); or

(b) is under age nineteen (19) if the person is:

(i) a full-time student in a secondary school or the equivalent level of vocational or technical training; and

(ii) Expected to complete the program before age nineteen (19);

(2) Is not self-supporting;

(2) Is not a member of the Armed Forces of the United States, and

(4) If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a((1)).

(g)(3) “Evidence of identity” means:

(a) A current state driver’s license or state identification document containing the individual’s picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document;

(c) For a child who is a child under the age sixteen (16) or younger:

1. A school identification card with a photograph;

2. A military dependent’s identification card, if it contains a photograph;

3. A school record that shows the:

   a. Date and place of birth; and

   b. Parent or parents’ names;

4. A clinic, doctor, or hospital record showing date of birth;

5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child’s identity.

(4) "Kentucky Transitional Assistance Program" or "[K] TAP[I]" means Kentucky’s version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if both (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(5) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(6) "Satisfactory documentary evidence of citizenship or nationality":

(a) A United States passport;

(b) A Certificate of Naturalization (DHS Form N-550 or N-570);

(c) A Certificate of United States Citizenship (DHS Form N-550 or N-561);

(d) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs (a) through (c) of this subsection is not available or cannot be obtained:

1. A United States birth certificate;

2. A Certification of Birth issued by the Department of State (Form DS-1250);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545);

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872);

7. A final adoption decree;

8. Evidence of civil service employment by the United States government before June 1767;

9. An official military record of service showing a United States place of birth;

(e) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

   a. Was established at the time of a person’s birth;

   b. Was created at least five (5) years before the initial application date;

   c. Indicates a United States place of birth; or

   2. A life, health, or other insurance record that:

      a. Shows a United States place of birth; and

      b. Was created at least five (5) years before the initial application date;

   or

   (f) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs (a) through (e) of
this subsection is not available or cannot be obtained, the applicant
alleges citizenship, and nothing exists to indicate the person is not a
citizen:
(a) Federal or state census record showing;
(b) United States citizenship; or
(c) A United States place of birth.
2. Institutional admission papers that:
(a) Are from a nursing facility, skilled nursing facility, or other
institution;
(b) Were created at least five (5) years before the initial applica-
tion date; and
(c) Indicate a United States place of birth;
3. Medical record that:
(a) Was created at least five (5) years before the initial applica-
tion date; and
(b) Indicates a United States place of birth unless the applica-
tion is for a child under age five (5); or
4. Written affidavit by at least two (2) individuals:
(a) Of whom one (1) is not related to the applicant;
(b) Who have personal knowledge of the event establishing the
applicant’s claim of citizenship; and
(c) Who provide proof of their own citizenship and identity.
76 [(6)] (4)] “Qualified alien” means an alien who, at the time
the alien applies for or receives Medicaid, meets the requirements
established in Section 5(12) of this administrative regulation.
76 [(7)] (6)] “Veteran” is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving
Title IV-E benefits, Supplemental Security Income, Optional or
Mandatory State Supplementation shall be eligible for Medicaid as
a categorically-needy individual.
(2) The following classifications of needy persons shall be
included in the program as categorically needy and thus eligible
for Medicaid participation:
(a) A child who is in foster family care or private nonprofit child-
caring institution dependent in whole or in part on a governmental
or private agency;
(b) A child in a psychiatric hospital, psychiatric residential treat-
ment facility, or medical institution for the mentally retarded;
(c) A pregnant woman;
(d) A child of unemployed parents;
(e) A child in a subsidized adoption dependent in whole or in
part on a governmental agency;
(f) A child (but not his parents) who:
1. Would have been financially eligible for Aid to Families with
Dependent Children benefits using the AFDC methodologies in
effect on July 16, 1996, and
2. Meets the definition of Section 1(2)(4) of this administrative
regulation;
(g) A qualified severely impaired individual as specified in 42
U.S.C. 1396a(a)(10)(A)(I)(I) and 1396d (to the extent the coverage
is mandatory in this state);
(h) An individual who loses SSI eligibility but would be eligible
for SSI benefits except for entitlement to or an increase in his
child’s insurance benefits based on disability as specified in 42
U.S.C. 1383c;
(i) An individual specified in 42 U.S.C. 1383c who:
1. Loses SSI or state supplementation payments as a result of
receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);
2. Would be eligible for SSI or SSP except for these benefits; and
3. Is not entitled to hospital insurance benefits under the Medi-
care program;
(j) A disabled widow, widower, or disabled surviving divorced
spouse, who would be eligible for SSI except for entitlement to an
old-age, survivors, or disability insurance (OASDI) benefit resulting
from a change in the definition of disability;
(k) A child who:
1. Was receiving supplemental security income on August 22,
1996; and
2. Except for the change in definition of childhood disability
would continue to receive supplemental security income; or
(l) A person with hemophilia who would be eligible for supple-
mental security income except he received a settlement in a class
action lawsuit entitled “Factor VIII or IX Concentrate Blood Prod-
ucts Litigation”.
(3) The classifications of needy persons listed in this subsection
shall be included in the program as categorically-needy and thus
eligible for Medicaid participation as limited by the provisions
of this subsection.
(a) A family which correctly received Medicaid for three (3) of
the last six (6) calendar months, and would have been terminated
from receipt of AFDC using AFDC methodologies in effect on July
16, 1996 as a result of new or increased collection of child or
spousal support, shall be eligible for extended Medicaid coverage
for four (4) consecutive calendar months beginning with the first
month the family would have been ineligible for AFDC
(b) A family which would have been terminated from AFDC
assistance using the AFDC methodologies in effect on July 16,
1996 because of increased earnings, hours of employment or loss
of earnings disregards shall be eligible for up to twelve (12) months
of extended Medicaid.
(c) A child born to a woman eligible for and receiving Medicaid
shall be eligible for Medicaid as of the date of his birth if:
1. The child:
(a) Has not reached his first birthday; and
(b) Resides in the household of the woman; and
2. The woman remains, or would remain if pregnant, eligible for
the assistance.
1. Except as provided in subparagraph 3 of this paragraph,
(2) Eligibility for a similar hospice participant or similar participant in
a similar project of home and community based services for the
mentally retarded or the aged, blind or disabled shall be determined
using the method established in subparagraph 1 of this subsection.
2. Eligibility of an institutionalized individual in an Intermediate
care facility for the mentally retarded and developmentally disabled
(ICF/MR/DD) or supports for community living (SCL) for an
individual with mental retardation or a developmental disability waiver
meeting appropriate patient status criteria whose gross income
exceeds 300 percent of the SSI benefit amount shall be deter-
mined by comparing the cost of the individual’s care to the individu-
als income.
(3) A woman during pregnancy, and as though pregnant
through the end of the month containing the 60th day of a period
beginning on the last day of pregnancy, or a child under six (6)
years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the
income requirements for this eligibility group as specified in 907
KAR 1:640.
(l) If an eligible child is receiving covered inpatient services on
a birthday which will make him ineligible due to age, the child shall
remain eligible until the end of the stay for which the covered inpa-
stive services are furnished if the child remains otherwise eligible
except for age
(g) A child who has attained six (6) years of age but has not
attained nineteen (19) years of age as specified in 42 U.S.C.
1396a(l)(1) shall meet income requirements established in 907
KAR 1:640, Section 2(2)(c).
(h) If federal Medicaid-matching funds are available to cover
the costs of the program, an optional targeted low-income child as
established in 907 KAR 4:020, Section 2(1) who has not attained
the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1)
shall meet the income requirements established in 907 KAR 1:640,
Section 2(2)(f).
Section 3. The Medically Needy. (1) An individual including a
child pursuant to Section 2(2)(f) of this administrative regulation or
a pregnant woman who has sufficient income to meet the individu-
als [he] basic maintenance needs may apply for Medicaid with
need determined in accordance with the income and resource
standards established in 907 KAR 1.640 through 907 KAR 1.665 if
the individual [he] meets:

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(a) The income and resource standards of the medically needy program established in 907 KAR 1:640 and 907 KAR 1:645; and
(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.
(2) The medically eligible groups shall include:
(a) A pregnant woman during the course of her pregnancy; and
(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:
(a) Be eligible for and receiving Medicare Part A benefits;
(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and
(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:
1. Retrospectively; or
2. For the month in which the determination was made.
(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(e) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006.
(3) A specified low-income Medicare beneficiary as defined in 42 U.S.C. 1396(a)(10)(E)(ii) shall be eligible under Medicaid for payment of the premium Part B premium.
(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:
(1) A child in foster care, a private institution, psychiatric hospital, or mental retaetment institution shall meet the definition in Section 122(14) of this administrative regulation;
(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;
(3) At the time of application, unemployment related to eligibility of both parents and children shall be determined using the following criteria:
(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:
   a. The work is intermittent; and
   b. The excess is of a temporary nature as evidenced by the fact that the individual:
      i. Was under the 100 hour standard for the prior two (2) months; and
      ii. Is expected to be under the standard during the next month;
   2. Within twelve (12) months prior to application, a parent received unemployment compensation; or
   3. A parent is receiving or has been found ineligible for unemployment compensation; and
   (b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.10(a)(3)(i);
(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified;
(5) An aged individual shall be at least sixty-five (65) years of age;
(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);
(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1320c(a)(3) relating to RSDI and SSI;
(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.
(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.
1. To be eligible for this transitional benefit period, the family shall:
   a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;
   b. Have a dependent child living in the home; and
   c. Report earnings and child care costs no later than the 21st day of the fourth month.
   2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.
   3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.
(b) To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:
   a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;
   b. Have a dependent child living in the home;
   c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;
   d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and
   e. During the immediately preceding three (3) months, have a caretaker relative who shall have been:
      i. Employed; or
      ii. Unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.
      2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.
   3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.
   (c) Good cause shall exist under the following circumstances:
      1. The specified relative was out-of-town for the reporting month;
      2. An immediate family member living in the home was institutionalized or died during the reporting month;
      3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or
      4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;
   (d) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.
   (a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have

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been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:
1. Grandfather;
2. Grandmother;
3. Brother;
4. Sister;
5. Uncle;
6. Aunt;
7. Nephew;
8. Niece;
9. First cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:
a. Grand;
b. Great;
c. Great-great; or
12. A stepfather, stepmother, stepbrother, or stepsister;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The cabinet:
   (i) Shall exempt an applicant or recipient who currently receives Medicare or Social Security who no longer receives Medicare or Social Security, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;

(b) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf, and

(c) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state government public assistance law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individual.

(a) Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1252;

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

(ix) A veteran pursuant to 8 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(x) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303(a); (xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unmarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(i); or

(c) A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158;

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(v) A veteran pursuant to 8 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303(a);

(vii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

(viii) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. [The alien shall be qualified as a categorically needy recipient;

2. [a] The alien shall meet the income, resource and categoronial requirements of the Medicaid Program;

3. [b] The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of adequate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

4. [c] Approval of eligibility shall be for a time limited period, with the period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

5. [d] The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

6. [e] An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

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(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a child for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed, and

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is:

(1) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(2) Patient In a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday;

(c) Sixty-five (65) years of age or over, or

(4) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period, and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial, and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits;

4. Unemployment compensation; and

5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit. If the applicant or recipient believes that applying for the benefit would be to his disadvantage,

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed to the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility. (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements. [The newborn child or other dependent child shall be eligible for Medicaid if financial eligibility requirements are met.]

GLENN JENNINGS, Commissioner
MIKE BURNSIDE, undersssoecetary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 at 4:15 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at AARS, November 14, 2006)

907 KAR 1:012. Inpatient hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194A.050, 42 C.F.R. 440.10, 42 U.S.C. 1395, a, b, d, f, [42 C.F.R. 400-726]
NECESSITY, FUNCTION, AND CONFORMITY: [42 C.F.R. 400-726, 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 Medi-
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[Text content]

Section 3. Covered Admissions. (1) An admission [Admission] primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis shall be covered.

(2) An admission [Admission] relating to only observation or diagnostic purposes shall not be covered.

(3) Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

(4) Unless an emergency exists, a weekend stay associated with a Friday or Saturday admission for an elective surgical or diagnostic procedure shall not be covered by the department.

In accordance with 907 KAR 1:013, an admission for less than twenty-four (24) hours shall not be approved or reimbursed.

Section 4. Noncovered Services. Inpatient hospital services not covered shall include:

(1) A service which is not medically necessary including (a) to the patient's well-being, such as television, telephone, or guest meals;

(2) Private duty nursing;

(3) Supplies, drugs, appliances, or equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient;

(4) A laboratory test not specifically ordered by a physician and not done on a predetermination basis unless an emergency exists;

(5) Private accommodations unless medically necessary and so ordered by the attendant physician;

(6) The following listed surgical procedures, except if a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision), or muscle;

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts or condylomas, anterior nose bleeds, or cervix;

(c) Circumcision;

(d) Dilatation: dilation and curettage (diagnostic or therapeutic nonobstetrical); dilation or probing of lacrimal duct;

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, or joint;

(f) Pelvic exam under anesthesia;

(g) Excision: Bartholin cyst, condylomas, foreign body, lesions lipoma, navi (moles), sebaceous cyst, polyps, or subcutaneous fistulas;

(h) Extraction: foreign body or tooth;

(i) Graft, skin (pinch, split or full thickness up to defect size three-fourths (3/4) inch diameter);

(j) Hysterectomy;

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure or fractures;

(l) Neatotomy or urethral dilatation, removal calculus and drainage of bladder without incision;

(m) Myringotomy with or without tubes, otoplasty;

(n) Oscopy with or without biopsy (with or without salpingogram); arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, oscopy, and sigmoidoscopy or procto sigmoidoscopy;

(o) Removal; IUD, fingernail or toenails;

(p) Tenotomy hand or foot;

(q) Vasectomy; or

(r) Zplasty for relaxation of scar or contracture.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 at 4 p.m.
CONTACT PERSON: J. E. Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRIS, November 14, 2006)

907 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53
STATUTORY AUTHORITY: KRS 194.050(1), 400-2004-726
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program (of Medical Assistance in accordance with Title XIX of the Social Security Act). KRS 205.520 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 citizenry. This administrative regulation establishes [out-of-state] the provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on behalf of [in-behalf-of] the categorically needy and medically needy.

Section 1. Definitions. (1) "Comprehensive choices" means a benefit plan for an individual who:
(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;
(b) Receives services through either:
1. A nursing facility in accordance with 907 KAR 1:022;
2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 1:096;
3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or
4. The Model Waiver II Program in accordance with 907 KAR 1:595; and
(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R [comprehensive choice as defined in 907 KAR 1:096, Section 1];
(2) "Department" means the Department for Medicaid Services or its designee.
(3) [3] "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.
(4) "Family choices" means a benefit plan for an individual who:
(a) Is covered pursuant to:
1. 42 U.S.C. 1396a(a)(10)(A)(ii) and 1396u-1;
2. 42 U.S.C. 1396a(a)(52) and 1396l-6 (excluding children eligible under Part A or E of Title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679);
3. 42 U.S.C. 1396a(a)(10)(A)(V) as described in 42 U.S.C. 1396a(a)(10)(A)(V); or
4. 42 U.S.C. 1396a(a)(10)(A)(V) as described in 42 U.S.C. 1396a(a)(10)(A)(V); or
5. 42 U.S.C. 1396a(a)(10)(A)(V); or
6. 42 C.F.R. 457.310; and
(b) Has a designated package code of 2, 3, 4, or 5 [family choices as defined in 907 KAR 1:096; Section 1];
(5) [5] "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deceased due to death, incapacity, or absence;
2. Do not receive K-TAP and are deceased due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deceased due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(a) Blind Individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(b) Disabled Individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(c) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(d) Individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(e) Pregnant women [global choices as defined in 907 KAR 1:096, Section 1];
(6) [6] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 1:130.
(7) [7] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.
(8) "Optimum choices" means a benefit plan for an individual who:
(a) Meets the Intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;
(b) Receives services through either:
1. An Intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;
2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and
(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1;
(9) "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unplisted procedures or services [optimum choices as defined in 907 KAR 1:096; Section 1];

Section 2. Coverage [Covered] Criteria (1) To be covered by the department:
(a) The following services shall be prior authorized and meet the requirements established in paragraph (b)1 and 2 of this subsection:
1. Magnetic resonance imaging (MRI);
2. Magnetic resonance angiogram (MRA);
3. Magnetic resonance spectroscopy;
4. Position emission tomography (PET);
5. Computed tomography;
6. Keratocopy;
7. Ultrasound subsequent to second obstetric ultrasound;
8. Myocardial imaging;
9. Cardiac blood pool imaging;
10. Radiopharmaceutical procedures;
11. Gastric restrictive surgery or gastric bypass surgery;
12. A procedure that is commonly performed for cosmetic purposes;
13. A surgical procedure that requires completion of a federal consent form; or
14. An unlisted procedure or service and; (1) [Outpatient surgery (performed in an outpatient hospital setting)]
2. Cardiac catheterization;
3. Lithotripsy;
4. Computed tomography (CT) imaging;
5. Computed tomographic angiography (CTA);
6. Computed tomography guidance;
7. Magnetic resonance imaging (MRI);
8. Magnetic resonance angiography (MRA);
9. Magnetic resonance spectroscopy;
10. Positron emission tomography (PET);
11. Dual energy X-ray absorptiometry (DEXA);
12. Radiographic absorptiometry;
13. Chemodilution videodensitometry;
14. Scintigraphy;
15. Ultrasound subsequent to second (2nd) obstetric ultrasound;
16. Unlisted procedure;
17. Myocardial imaging;
18. Cardiac blood pool imaging;
19. Single Photon Emission Computed Tomography (SPECT);
20. Sensitive nerve conduction studies (SNCS);
21. Magnetic resonance cholangiopancreatography (MRCP);
22. Tomographic brain mapping;
23. Magnetic source imaging;
24. Fluorine-18 fluorodeoxyglucose (F-18 FDG) imaging;
25. Electron beam computed tomography (also known as ultrafast CT, Cino-CT), and
(b) An outpatient hospital service, including those [not] identified in paragraph (a) of this subsection, shall be:
1. Medically necessary and
2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.
(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:
(a) An immunization service;
(b) A radiology procedure if the recipient [member] has a cancer or transplant diagnosis code; or
(c) A service provided to a recipient in an observation bed.
(3) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the Department.
(4) The following covered outpatient services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly-licensed dentist:
(a) A diagnostic service ordered by a physician;
(b) A therapeutic service, except for occupational therapy, ordered by a physician;
(c) An emergency room service provided in an emergency situation as determined by a physician;
(d) A drug, biological, or injection administered in the outpatient hospital setting.
(4) A covered hospital outpatient service for maternity care may be provided by:
(a) An advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife;
(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

Section 3. Hospital Outpatient Services Not Covered by the Department. The following services shall not be considered a covered hospital outpatient service:
(1) An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;
(2) A service for which:
(a) An individual has no obligation to pay; and
(b) No other person has a legal obligation to pay;
(3) A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medical Assistance Program for hospital outpatient services;
(4) A drug, biological, or injection (injectable) purchased by or dispensed to a patient; or
(5) A routine physical examination.

Section 4. Therapy Limits. (1) Speech therapy shall be limited to:
(a) Ten (10) visits per twelve (12) months for a recipient [member] of the Global Choices benefit package;
(b) Thirty (30) visits per twelve (12) months for a recipient [member] of the:
1. Comprehensive Choices benefit package;
2. Optimum Choices benefit package; and
(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit package.
(2) Physical therapy shall be limited to:
(a) Fifteen (15) visits per twelve (12) months for a recipient [member] of the Global Choices benefit package;
(b) Thirty (30) visits per twelve (12) months for a recipient [member] of the:
1. Comprehensive Choices benefit package;
2. Optimum Choices benefit package; and
(c) Fifteen (15) visits per twelve (12) months for a member of the Family Choices benefit package.
(3) The therapy limits established in subsection (1) and (2) of this section shall be self-maintaining, that they may be over-ruled if the Department determines that additional visits beyond the limit are medically necessary.
(a) To request an override:
1. The provider shall telephone or fax the request to the department; and
2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.
(b) An appeal of a denial regarding a requested override shall be made in accordance with 907 KAR 1:493.
(c) Except for recipients under age twenty-one (21), prior authorization shall be [is] required for each visit that exceeds the limit established in subsections (1) and (2) of this section.
(5) The limits established in subsections (1) and (2) of this section shall not apply to a recipient under twenty-one (21) years of age. [Hospital Outpatient Services-Covered by the Medical Assistance Program. There are no limitations on the number of hospital outpatient visits or services available to program recipients.
(1) Hospital outpatient services to be covered, as listed below, shall be prescribed, by or in the case of emergency room services, determined to be medically necessary by a duly-licensed physician, or if applicable, a duly-licensed dentist, for the care and treatment indicated, in the diagnosis and management of illness, injury, impair or maternity care; or for the purpose of determining the existence of an illness or condition in a patient. The services shall be furnished by or under the supervision of a duly licensed physician, or if applicable, a duly-licensed dentist.
(a) Diagnostic services as ordered by a physician.
(b) Therapeutic services as ordered by a physician.
(c) Emergency room services in emergency situations as determined by a physician.
(d) Effective with regard to services provided on or after July 1, 1990, drugs, biologicals, or injections administered in the outpatient hospital setting.
(2) Hospital outpatient services for maternity care may be provided by an advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife or by a registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health Resources.

Section 3. Hospital Outpatient Services Not Covered by the Medical Assistance Program.
(1) Items and services which are not reasonable and necessary for or related to the diagnosis or treatment of illness or injury, impairment or maternity care.
(2) Services for which the individual has no obligation to pay for which no other person has a legal obligation to provide or to pay.
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(3) Medical supplies and appliances except those incident to the performance of services in the hospital outpatient department and which are included in the rate of payment established by the Kentucky Medical Assistance Program for hospital outpatient services.

(4) Drugs, biologicals, and inactives—purchased by or dispensed to a patient.

(5) Routine physical examinations.

MARY BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LIRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(As Amended at ARRS, November 14, 2006)

907 KAR 1:025. Dental services.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]

The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to dental services [including new limit provisions as authorized by Pub.L. 109-171].

Section 1. Definitions. (1) "Comprehensive orthodontic" means a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure that is performed:
   (a) For removing thick or dense deposits on the teeth which is performed if [selaw] tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or [and] gum disease; and
   (b) Separately from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque [and] calculus.

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

(5) "Disabling malocclusion" means that a patient has a condition that meets the criteria established in Section 13(7) of this administrative regulation:
   (a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;
   (b) Has a true anterior open bite that does not include:
      1. One (1) or two (2) teeth slightly out of occlusion;
      2. Where the incisors have not fully erupted;
   (c) Demonstrates a significant anteroposterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);
   (d) Has an anterior crossbite that involves:
      1. More than two (2) teeth in crossbite;
      2. Obvious gagging or clenching,

(6) "Dentist" means a person licensed to practice as a dentist in Kentucky.

(7) "Dentofacial malocclusion" means the malpositioning of the teeth and associated structures causing occlusal, esthetic or functional disturbances.

(8) "Direct practitioner contract" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(9) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:
   (a) Requires little additional practitioner resources; or
   (b) Is clinically integral to the performance of the primary procedure.

(10) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

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

(12) "Mutually exclusive" means that two (2) procedures:
   (a) Are not reasonably performed in conjunction with one another [each other] during the same patient encounter on the same date of service;
   (b) Represent two (2) methods of performing the same procedure;
   (c) Represent medically impossible or improbable use of CDT codes;
   (d) Are described in CDT as inappropriate coding of procedure combinations.

Section 2. Conditions of Participation. (1) A participating provider shall be licensed as a provider in the state in which the practice is located.
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(2) A participating provider shall comply with the terms and conditions established in the following administrative regulations:
(a) 907 KAR 1:005, Nonduplication of payments;
(b) 907 KAR 1:671, Conditions of Medicaid provider participation, withholding overpayments, administrative appeal [appeals] process, and sanctions; and
(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating provider shall comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164.

(4) A participating provider shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of the decision prior to the delivery of service. If the provider accepts the recipient, the provider:
(a) Shall bill Medicaid rather than the recipient for a covered service;
(b) May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and
(c) Shall not bill the recipient for a service that is denied by the department for:
   1. Being:
      a. Incidental;
      b. Integral; or
      c. Mutually exclusive;
   2. Incorrect billing procedures, including incorrect bundling of procedures;
   3. Failure to obtain prior authorization for the service; or
   4. Failure to meet timely filing requirements [in accordance with 42 C.F.R. 447-46].

Section 3. Record Maintenance (1) A provider shall maintain comprehensive legible medical records which substantiate the services billed.
(2) A medical record shall be signed by the provider and dated to reflect the date of service.
(3) An X-ray shall be of diagnostic quality and shall include the:
   a. Recipient’s name;
   b. Service date; and
   c. Provider’s name.
(4) Unless a recipient’s provider demonstrates that dental services in excess of the following service limitations are medically necessary, limited to:
   1. Two (2) prophylaxis per twelve (12) month period for a recipient under age twenty-one (21);
   2. One (1) dental visit per month per provider for a recipient age twenty-one (21) years and over and
   3. One (1) prophylaxis per twelve (12) month period for a recipient age twenty-one (21) years and over.
(5) A covered service provided by an individual who meets the definition of other licensed medical professional shall be covered if the:
   a. Individual is employed by the supervising oral surgeon, dentist, or dental group;
   b. Individual is licensed in the state of practice; and
   c. [3] Supervising provider has direct practitioner contact with the recipient, except for a service provided by a dental hygienist in accordance with KRS 313:310.
   2. A dental hygienist may provide a service without direct practitioner contact if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313:310.

(3) A dental resident, student, or dental hygiene student may provide services under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(4) Coverage shall be limited to services identified in 907 KAR 1 626, Section 3, in the following CDT categories:
(a) Diagnostic;
(b) Preventive;
(c) Restorative;
(d) Endodontics;
(e) Periodontics;
(f) Removable prosthetics;
(g) Maxillofacial prosthetics;
(h) Orthodontics;
(i) Orthodontics;
(j) Adjunctive general services.

Section 5. Diagnostic Service Coverage Limitations. (1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.
(b) An exception shall apply as the Department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis for an individual under twenty-one (21) years of age.
(c) [4] Except as provided in paragraph (b) of this subsection, a comprehensive oral evaluation shall be covered in conjunction with the following:
1. A limited oral evaluation for trauma related injuries;
2. Space maintainers;
3. Root canal therapy;
4. Denture relining;
5. Transitional appliances;
6. A prosthetic oral service;
7. Temporomandibular joint therapy;
8. Orthodontic service;
9. Palliative treatment; or
10. A hospital call.
(2)(a) Coverage for a limited oral evaluation shall:
1. Be limited to a trauma related injury or acute infection;
2. Be limited to one (1) per date of service, per recipient, per provider; and
3. Require a prepayment review.
(b) A limited oral evaluation shall not be covered in conjunction with another service except for:
1. A penicillin test; and
2. A bitewing x-rays;
3. A panoramic x-ray;
4. A periapical x-ray;
5. A simple or surgical extraction;
6. Surgical removal of a residual tooth root;
7. Removal of a foreign body;
8. Suture of a recent small wound; and
9. Intravenous sedation or
10. Incision and drainage of infection.
(c) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiographic service [a]-[x-ray]-necessary-for-a-root-canal-or-oral-surgical-procedure, or an x-ray that exceeds the following service limitation and is determined to be medically necessary by the department [shall not be subject to the following limitations shall apply to coverage of a radiographic service]:
1. [5] Bitewing x-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider, per provider;
2. [6] Penicillin x-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider, per provider;
3. [6] An intraoral complete x-ray series shall be limited to one (1) per twelve (12) month period, per recipient, per provider, per provider;
4. [6] Periapical and bitewing x-rays shall not be covered in
the same twelve (12) month period as an intraoral complete x-ray series per recipient, per provider; per provider;[

5. [e] A panoramic film shall:
   a. [t] Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and
   b. [a] Require prior authorization in accordance with Section 15(2) and (3) of this administrative regulation for a recipient under age six (6);

6. [f] A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; per provider; or

7. [g] Cephalometric and panoramic x-rays shall not be covered in conjunction with a comprehensive orthodontic consultation.

The limits established in paragraph (a) of this subsection shall not apply to:
1. An x-ray necessary for a root canal or oral surgical procedure;
2. An x-ray that exceeds the established service limitations and is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations. (1)(a) Coverage of a prophylaxis shall be limited to:
1. For an individual twenty-one (21) years of age and over, one (1) per twelve (12) month period, per recipient; and
2. For an individual under twenty-one (21) years of age, two (2) per twelve (12) month period, per recipient;[

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or [and] root planing.

2(a)[a] Coverage of a sealant shall be limited to:
1. A recipient age five (5) through twenty (20) years;
2. Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and
3. An occlusal surface that is noncarious.[and]

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same date of service; and
(c) A provider shall be responsible for maintaining a sealant for four (4) years at no additional expense to the recipient or the department.

3(a)[a] Coverage of a space maintainer shall:
1. Be limited to a recipient under age twenty-one (21); and
2. (a) Fabrication:
   a. [t] Insertion;
   b. [a] Follow-up visits;
   c. [a] Adjustments; and
   d. [a] Documentation in the recipient's medical record.

(i) [a] Substantiate the use for maintenance of existing inter-tooth space; and
(ii) [b] Support the diagnosis and a plan of treatment that includes follow-up visits.

(b) [t] The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) [a] Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination thereof shall not exceed two (2) per twelve (12) month period, per recipient.

4(a)[a] A full mouth debridement shall only be covered for a pregnant woman; and
(b) Only one (1) full mouth debridement per pregnancy shall be covered.

Section 7. Restorative Service Coverage Limitations. (1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

2(a) Coverage of a prefabricated crown shall be:
(a) Limited to a recipient under age twenty-one (21); and
(b) Inclusive of any procedure performed for restoration of the same tooth.

3(a) Coverage of a pin retention procedure shall be limited to:
(a) A permanent molar;
(b) One (1) per tooth, per date of service, per recipient; and
(c) Two (2) per permanent molar, per recipient.

4(a) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:
(a) An amalgam, three (3) or more surfaces;
(b) A permanent prefabricated resin crown; or
(c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations. (1) Coverage of the following endodontic procedures shall be limited to a recipient under age twenty-one (21):
(a) A pulp cap direct;
(b) Therapeutic pulpotomy; or
(c) Root canal therapy.

2(a) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

3(a) Coverage of root canal therapy shall require:
1. Treatment of the entire tooth;
2. Completion of the therapy; and
3. An x-ray taken before and after completion of the therapy.

(b) The following root canal therapy shall not be covered:
1. The Sargent method of root canal treatment; or
2. A root canal on one (1) root of a molar.

Section 9. Periodontic Service Coverage Limitations. (1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:
(a) A recipient with generalized overgrowth due to a:
   1. Congenital condition;
   2. Hereditary condition; or
   3. Drug-induced condition; and
(b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.

1. Coverage of a quadrant procedure shall require a minimum of three (3) tooth areas within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than two (2) teeth within the same quadrant.

3(a) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:
(a) Pocket-depth measurements;
(b) A history of nonsurgical services; and
(c) Prognosis.

3(b) Coverage for a periodontal scaling and root planing procedure shall:
(a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;
(b) Require prior authorization in accordance with Section 15(2) and (4) of this administrative regulation; and
(c) Require documentation to include:
   1. A radiograph film or bitewing x-ray; and
   2. Periodontal charting of preoperative pocket depths.

4(a) Coverage of a quadrant procedure shall require a minimum of three (3) tooth area within the same quadrant.

(b) Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.

6(a) A full mouth debridement shall only be covered for a pregnant woman.
(b) Only one (1) full mouth debridement per pregnancy shall be covered.

Section 10. Prosthodontic Service Coverage Limitations. (1) A removable prosthetic or denture repair shall be limited to a recipient under age twenty-one (21).

2(a) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:
(a) Repair resin denture base; or [and]
(b) Repair cast framework.

2(b) Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:
(a) Replacement of a broken tooth on a denture;
(b) Laboratory relining of:
   1. Maxillary dentures; or
   2. Mandibular dentures;
Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board certified prosthodontist:

(1) A nasal prosthesis;
(2) An auricular prosthesis;
(3) A facial prosthesis;
(4) A mandibular resection prosthesis;
(5) A pediatric speech aid;
(6) An adult speech aid;
(7) A palatal augmentation prosthesis;
(8) A palatal lift prosthesis;
(9) An oral surgical splint; or
(10) An unspecified maxillofacial prosthesis.

Section 12. Oral and Maxillofacial Service Coverage Limitations. (1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall:

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a three (3) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

(a) Be covered for temporomandibular joint therapy;

(b) Require prior authorization in accordance with Section 15(2) and (5) of this administrative regulation;

(c) Be limited to a recipient under age twenty-one (21); and

(d) Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to one (1) per date of service.

(7) Except as specified in subsection (8) of this section, a service provided by an oral surgeon shall be covered in accordance with 907 KAR 3.003, Physicians' services.

(8) If performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:

(a) Extractions,

(b) Impactions; and

(c) Surgical access of an unerupted tooth.

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

(a) Be limited to a recipient under age twenty-one (21); and

(b) Require prior authorization.

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) The department shall only cover new orthodontic brackets or appliances.

(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to:

1. The correction of a disabling malocclusion; or

2. Transitional or full permanent dentition unless for treatment of a cleft palate or severe facial anomaly.

(7) A disabling malocclusion shall exist if a patient:

(a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;

(b) Has a true anterior open bite that does not include:

1. One (1) or two (2) teeth slightly out of occlusion; or

2. Where the incisors have not fully erupted;

(c) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);

(d) Has an anterior crossbite that involves:

1. More than two (2) teeth in crossbite;

2. Obvious gingival stripping; or

3. Recession related to the crossbite;

(e) Demonstrates handicapping posterior transverse discrepancies which:

1. May include several teeth, one (1) of which shall be a molar; and

2. Is handicapping in a function fashion as follows:

a. Functional shift;

b. Facial asymmetry;

c. Complete buccal or lingual crossbite; or

d. Speech concern;

(f) Has a significant posterior open bite that does not involve:

1. Partially erupted teeth; or

2. One (1) or two (2) teeth slightly out of occlusion;

(g) Except for third molars, has impacted teeth that will not erupt into the arches without orthodontic or surgical intervention;

(h) Has extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal conditions specified in paragraphs (a) through (g) of this subsection;

(i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures, and does not include simple loss of teeth with no other effects;

(j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

(k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach;

(l) Has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch decompilation.

(8) Coverage of comprehensive orthodontic treatment shall not be inclusive of orthognathic surgery.

(9) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) A referral form, if applicable; and

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for treatment provided.

(10) Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon submission of the prior authorization requirements specified in Section 15(2) and (7) of this administrative regulation if treatment:

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations. (1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except radiographs.

(2)(a) Coverage of a hospital call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call shall not be covered in conjunction with:

1. Limited oral evaluation;

2. Comprehensive oral evaluation, or


(3)(a) Coverage of Intravenous sedation shall be limited to a recipient under age twenty-one (21).

(b) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

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Section 15. Prior Authorization. (1) Prior authorization shall be required for the following:
(a) A panoramic film for a recipient under age six (6);
(b) Periodontal scaling and root planing;
(c) An occlusal orthotic device;
(d) A preorthodontic treatment visit;
(e) Removable appliance therapy;
(f) Fixed appliance therapy; or
(g) A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:
(a) A MAP 39, Prior Authorization for Health Services;
(b) Additional forms or information as specified in subsections (3) through (7) of this section; and
(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;
(b) Panoramic film or intraoral complete series; and
(c) Dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:
(a) A MAP 396, Kentucky Medicaid Program Orthodontic Program Evaluation Form;
(b) A MAP 39A, Kentucky Medicaid Program Orthodontic Services Agreement;
(c) Cephalometric x-rays with tracing;
(d) A panoramic x-ray;
(e) Intraoral and extraoral frontal and profile pictures;
(f) Occluded and trimmed dental models;
(g) An oral surgeon’s pretreatment work up notes if orthognathic surgery is required.

(h) After six (6) monthly visits are completed, but not later than twelve (12) months after the beginning date of service:
1. A MAP 559, Six (6) Month Orthodontic Progress Report; and
2. An additional MAP 39, Prior Authorization for Health Services; and

(i) Within three (3) months following completion of the comprehensive orthodontic treatment:
1. Beginning and final records; and
2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(8) Upon receipt and review of the materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(9) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(10) Prior authorization shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the provider.

(11) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

Section 16. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:553.

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

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

Section 17. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) "MAP 9, Prior Authorization for Health Services", December 1995 edition[1];
(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement", December 1995 edition[2];
(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form", December 1995 edition[3];
(d) "MAP 306, Kentucky Medicaid Program Orthodontic Evaluation Form", March 2001 edition[4];
(e) "MAP 559, Six (6) Month Orthodontic Progress Report", December 1995 edition[5]; and
(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission", December 1995 edition[6].

(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. BIRDWISSTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVE BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7505, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(As Amended at ARRS, November 14, 2006)

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

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.320(3)

NECESSITY, FUNCTION, AND CONFORMITY The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Kentucky Medicaid Program. KRS 205.320(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. The administrative regulation establishes the method for determining amounts payable by the Medicaid Program for home health agency services that are provided to Kentucky's Medicaid-eligible recipients. The amendment to the administrative regulation continues a reimbursement increase pursuant to 2005 Ky. Acts ch. 173, Part I'H.3 t.(23), and HB 382-2006-GA.]

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.

(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.

(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.

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

(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.70(d)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Payment to an In-state HHA. (1) Except as provided in Section 14 (16) of this administrative regulation, the department shall reimburse a Medicaid participating in-state HHA on the basis of an Interim rate established pursuant to subsection (2) of this section for the following services:
   (a) Speech therapy;
   (b) Physical therapy;
   (c) Occupational therapy;
   (d) Medical social services;
   (e) Home health aide services; and
   (f) Skilled nursing services.

(2) The Interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:
   (a) The department shall use cost data for each category of service from an HHA’s most recent available Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;
   (b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;
   (c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor’s, by:
      1. Trending the total cost data to the beginning of a rate year; and
      2. Indexing cost data established pursuant to subparagraph 1 of this paragraph for inflationary cost increases projected to occur during the rate year;
   (d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)2 of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection;
   (e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection;
   (f) The interim rate for a publicly-operated HHA shall be the lesser of:
      1. The average unit cost pursuant to paragraph (d) of this subsection;
      2. The Medicare upper limit as issued to the provider through a Medicare carrier; and
      3. The Medicare upper limit.
   (3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:
      (a) Disposable medical supplies; and
      (b) Enteral nutritional products.
   (4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:
      (a) Settled to the lesser of the:
         1. Allowable Medicaid cost, as established in an HHA cost report that the department has:
            (a) Audited, or
            (b) Desk reviewed, or
         2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.1(3) shall be settled pursuant to paragraph (a) of this subsection, and
      (b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report instructions.
   (5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:
      (a) Settled to the lesser of:
         1. Allowable Medicaid cost, as established by the Kentucky Medicaid Medical Supply Cost Settlement Worksheet, that the department has:
            (a) Audited, or
            (b) Desk reviewed, or
         2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.1(3) shall be settled pursuant to subparagraph (paragraph (a)) of this paragraph (subsection); and
      (b) Settled utilizing aggregation of costs in accordance with the
Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions.

(5)(6)(a) If a settlement pursuant to subsection (4) (or-6) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2.

(b) If a settlement pursuant to subsection (4) (or-6) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.

(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation.

(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:

(a) Considered a new HHA; and
(b) Reimbursed at the Interim rate equal to the lesser of:
   1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 7(2)(e) of this administrative regulation; or
   2. The current Medicaid upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:

(a) Submitted pursuant to Section 8 of this administrative regulation; and
(b) Received by the department by May 31 preceding the rate year.

(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department shall grant a rate change if the provider:

(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and
(b) Submits a projected cost report.

(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4)(or-6) of this administrative regulation.

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

<table>
<thead>
<tr>
<th>Percentage of Per Unit Cost to Upper Limit</th>
<th>Incentive Payment Per Visit Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.01% - 100%</td>
<td>$1.00</td>
</tr>
<tr>
<td>90.01% - 95%</td>
<td>$1.50</td>
</tr>
<tr>
<td>85.01% - 90%</td>
<td>$2.00</td>
</tr>
<tr>
<td>80.01% - 85%</td>
<td>$2.50</td>
</tr>
<tr>
<td>60% and below</td>
<td></td>
</tr>
</tbody>
</table>

(2) An incentive payment shall:

(a) Be subject to verification of visits;
(b) Bear an inverse relationship to the current year basic per visit cost; and
(c) Be adjusted each July 1 during the Interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.

(3) The portion of an Interim rate equal to the "incentive payment per visit amount" shall not be subject to retroactive settlement pursuant to Section 3(4)(or-6) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.

(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of the agency's:

(a) Usual and customary billed charge;
(b) Medicare upper limit; or
(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:

(a) Disposable medical supplies; and
(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:

(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:
   1. Urban; or
   2. Rural.

(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.

(c) Each HHA's average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:
   1. Grouped pursuant to paragraph (b) of this subsection; and
   2. Arrayed from lowest to highest.

(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.

(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(3) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicaid upper limits:

(a) A publicly-operated HHA; or
(b) A new HHA who does not have two (2) full years of operation.

(4) The Medicaid upper limit for skilled nursing services shall be the Medicaid upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 6(2) of this administrative regulation, an HHA shall submit to the department a completed cost report:

(a) That includes workpapers utilized to prepare the cost report including:
   1. Detail of how a reclassification or an adjustment was calculated;
   2. A working trial balance; and
   3. Schedules tying the trial balance to the cost report;
(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;
(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions; and
(d) Pursuant to 42 C.F.R. 413.24(a), (b), (c), and (e).

(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:

(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no
control;
(b) The provider submits a request for the extension in writing; and
(c) The request is received by the department within five (5) months after the close of the HHA’s fiscal year.
(3) The HHA’s payment shall be suspended if:
(a) Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and
2. A cost report has not been submitted to the department;
(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or
(c) The provider fails to provide the department with access to records pursuant to:
1. 907 KAR 1.672, Section 2(6); or
2. Subsection (4) of this section
(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:
(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d); and
(b) Documentation of work or services performed if compensation is claimed by the:
1. Owner; or
2. A related family member of the:
   a. Owner; or
   b. Administrator.
(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1 030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.
(6) If the department is denied access to a subcontractor’s records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.
(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:
(a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:
1. Beginning with the first day of the provider’s fiscal year immediately preceding the provider’s termination date; and
2. Ending on the date of termination of its provider agreement with the Medicaid Program; and
(b) A final settlement pursuant to Section 3(4) [or (6)] of this administrative regulation is completed by the department.

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:
(a) Reflective of a provider’s actual expenses of providing a service; and
(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.
(2) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:
(a) Allowable cost to related organizations pursuant to 42 C.F.R. 413.17;
(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;
(c) Research costs pursuant to 42 C.F.R. 413.90;
(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94; and
(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98; and
(f) Therapy and other services pursuant to 42 C.F.R. 413.106.

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

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

(3) A full-time owner/administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:
(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:
1. The owner's proof of performance of a necessary function; and
2. Documentation of time claimed for compensation; and
(b) A salary from the agency with which the person is primarily associated.

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

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

Section 12. Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:
(a) Review or audit by the department; and
(b) A final retroactive settlement based upon an adjustment to an HHA provider's costs reported in a cost report for any reporting period under review or audit.

(2) The department shall perform a uniform desk review (UDR) of each provider's annual cost report.
(3) A summary of the UDR shall be used:
(a) To settle the cost report without audit; or
(b) To determine the extent to which audit verification is required.
(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the "Government Auditing Standards".

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

Section 14. Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1:030 at the lesser of:
(1) The provider's usual and customary charge; or
(2) The Medicaid fixed upper payment limit per unit of service as established in Section 14 [16] of this administrative regulation.

Section 14. [16] Fixed Upper Payment Limits. [4] Except for state fiscal year 2006, the following rates shall be the fixed upper payment limits for home health services:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled Nursing</td>
<td>$87.15 ($83.00 per visit)</td>
</tr>
<tr>
<td>Home Health Aide</td>
<td>$34.13 ($32.60 per visit)</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$29.05 ($28.00 per visit)</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$35.00 ($31.00 per visit)</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$35.00 ($31.00 per visit)</td>
</tr>
<tr>
<td>Medical Social Service</td>
<td>$35.00 ($31.00 per visit)</td>
</tr>
</tbody>
</table>

[4] Except for state fiscal year 2006, the rates listed in subsection (4) of this section shall be increased by five (5) percent and be the home health service upper payment limits. The increased upper payment limits shall cease at close of business June 30, 2006 and be reduced by five (5) percent effective July 1, 2006.

Section 15. [16] Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:
(a) Payments received for services on or after November 1, 2002 in accordance with Section 14 [14] of this administrative regulation; and
(b) The estimated cost of providing services during the same time period.
(2) Based on a provider's most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.

(3) If a provider's cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 14 [14] of this administrative regulation, the department shall recoup any excess payments

Section 16. Reimbursement Review and Appeal. An HHA may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) The Annual Medicaid Home Health/HCB Cost Report Instructions", Department of Medicaid Services, May 1991 edition;
(c) The "Governement Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;
(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition, and
(e) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet Instructions", Department for Medicaid Services, June 2003 edition.

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

J. THOMAS BAGDET, MD, Ph.D., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWISTELL, Secretary
APPROVED BY AGENCY: June 29, 2006
FILED WITH LRC: June 30, 2006 at 1 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-9, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(As Amended at ARRS, November 14, 2006)

907 KAR 1:038. Hearing and Vision Program services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.140, 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, c, 1395(c-5) (paragraph 1005(c) of the Social Security Act, 410-412 of the Social Security Act)
STATUTORY AUTHORITY: KRS 194.030(2), 194.050(1), 205.520(3), EO 2004-726
NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program and Medicaid Assistance. 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 hearing services and vision program services for which payment shall be
made by the Medicaid Program [and amends severance in accordance with Pub. L. 109-171].

Section 1. Definitions. (1) "Comprehensive choices" means a benefit plan for an individual who:
(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;
(b) Receives services through either:
1. A nursing facility in accordance with 907 KAR 1:022;
2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;
3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or
4. The Model Waiver II Program in accordance with 907 KAR 1:595;
(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R (comprehensive choices as defined in 907 KAR 1:006). Section 1 (b) benefit package for recipient who;
1. Meets the nursing facility patient status criteria established in 907 KAR 1:022; and
(b) Receives services through:
1. A nursing facility in accordance with 907 KAR 1:022;
2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;
3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or
4. The Model Waiver II Program in accordance with 907 KAR 1:595;
(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.
(3) "Department" means the Department for Medicaid Services or its designee.
(d) (4a) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.
(4b) "Family choices" means a benefit plan for an individual who:
(a) Is covered pursuant to:
1. 42 U.S.C. 1396a(a)(10)(A)(ii) and 1396a - 1;
2. 42 U.S.C. 1396a(a)(22) and 1396c - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);
3. 42 U.S.C. 1396(a)(10)(A)(ii) as described in 42 U.S.C. 1396a (1)(B);
4. 42 U.S.C. 1396a(a)(10)(A)(ii) as described in 42 U.S.C. 1396a(4)(C);
5. 42 U.S.C. 1396a(a)(10)(A)(ii) as described in 42 U.S.C. 1396a(4)(D); or
6. 42 C.F.R. 457.310; and
(b) Has a designated package code of 2, 3, 4, or 5 (family choices as defined in 907 KAR 1:096. Section 1), a benefit package for children covered pursuant to:
(a) Section 1902(a)(10)(A)(i) and 1931 of the Social Security Act;
(b) Section 1902(a)(62) and 1926 of the Social Security Act (excluding children eligible under Part A or E of title IV);
(c) Section 1902(a)(10)(A)(iv) as described in 1922B(1)(B) of the Social Security Act;
(d) Section 1902(a)(10)(A)(iv) as described in 1922B(1)(C) of the Social Security Act;
(e) Section 1902(a)(10)(A)(iv) as described in 1922B(1)(D) of the Social Security Act; or
(f) 42 C.F.R. 457.310;
(5) "Global choices" means the department's default benefit package for the following populations:
(a) Caretaker relatives of children who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence;
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and older who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(c) Blind individuals who have lost SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
3. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(d) Disabled individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children or
2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(e) Individuals aged sixty-five (65) and older who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(f) Blind individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(g) Disabled individuals who have lost SSI or SSP benefits and are eligible for "pass through" Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
(h) "Global choices" means the department's default benefit plan consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence;
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(c) Blind Individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(d) Disabled Individuals who have lost SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(f) Blind Individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(g) Disabled Individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
(h) Pregnant women (global choices as defined in 907 KAR 1:006. Section 1), "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130;
(i) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53;
(j) "Option choices" means a benefit plan for an individual who:

- 1561 -
(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;
(b) Receives services through either:
1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or
2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and
(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or [ ] (option) as defined in 907 KAR 1:000. Section 1. [A bundled package for recipients who:
(a) Meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022, and
(b) Receive services through:
1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or
2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145.

Section 2 Coverage Criteria. (1) Prior to the delivery of a covered service or service, the service shall be determined by the department to be:
(a) Medically necessary and
(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.
(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 2. [3] Hearing Services. (1) All hearing coverage shall be:
(a) Limited to an individual under age twenty-one (21); and
(b) Provided in accordance with the Hearing Program Manual.
(2) Unless a recipient's health care provider demonstrates that services in excess of the following limitations are medically necessary, reimbursement for services provided by a certified audiologist to a recipient shall be limited to:
(a) [One] [One] complete hearing evaluation [per-year];
(b) [One] [One] hearing aid evaluation [per-year];
(c1) Three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid; and
2. A follow-up visit shall be related to the proper fit and adjustment of that hearing aid; and
(d) One (1) additional follow-up visit at least six (6) months following the fitting of a hearing aid.
(3) Hearing aid benefit coverage shall:
(a) Be contingent upon prior authorization granted by the department;
(b) Be for a hearing aid model recommended by a certified audiologist if the model is available through a Medicaid-participating hearing aid dealer; and
(c) Be Not exceed $800 (84-460) per ear every thirty-six (36) months.

Section 3. [4] Vision Program Services. (1) Vision program coverage shall be limited to:
(a) A prescription service;
(b) A repair service made to a frame; (c) A diagnostic service provided by:
1. An ophthalmologist; or
2. An optometrist to the extent the optometrist is licensed to perform the service;
(2) Eyeglass coverage shall:
(a) Be limited to a recipient who is under age twenty-one (21); and
(b) Not exceed:
1. $200 per year for a recipient in the global choices benefit package; or
2. $400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.
(3) To be covered:

A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) or [and] over [and] age
(b) A ophthalmic service specified in 907 KAR 3:005, Section 5, shall require prior authorization regardless of a recipient's age; and
(c) A service shall be provided in accordance with the Vision Program Manual. A recipient who is under age twenty-one (21):
(b) Eyeglasses;
(a) Prescription services;
(d) Repair service made to a frame or lens; or
e) Diagnostic services provided by an ophthalmologist or optometrist to the extent the ophthalmologist is licensed to perform the service and the service is covered in the ophthalmologist portion of the department's physician service program.
(2) Eyeglass coverage shall not exceed:
(a) $200 per year for a recipient in the global choices benefit package; or
(b) $400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.
(3) The department shall reimburse for vision care pursuant to the vision care reimbursement methodology established in 907 KAR 3:005. [Hearing Services. (1) Audiological benefit. Coverage shall be limited to the following services if medically necessary in accordance with 907 KAR 3:130 and provided to a child under age twenty-one (21) by a certified audiologist:
(a) Complete hearing evaluation;
(b) Hearing aid evaluation;
(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid; and
(d) One (1) follow-up visit six (6) months following fitting of a hearing aid.
(2) Hearing aid benefit. Coverage shall be limited to a child under age twenty-one (21) for a hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A recipient shall be limited to one (1) hearing aid per ear, annually.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.
(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 5. [6] [4] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "The Vision Program Manual, October [May] 2006 [June 2004] edition", Department for Medicaid Services; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family 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, Undersecretary
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7906, fax (502) 564-7573

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRS, November 14, 2006)

907 KAR 1:350. Coverage and payments for organ transplants.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53
NECESSITY, FUNCTION, AND CONFORMITY: [EG-2004-728, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. In accordance with federal regulations, KRS 205.520(3) 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 citizenry. This administrative regulation establishes provisions related to the coverage of (seeks forth-the-coverage and payments policy of the cabinet with regard to) organ transplants.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(3) "Experimental" means that a procedure has not previously been proven effective by the U.S. Food and Drug Administration in treating a patient’s health condition.

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

(5) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

Section 2. Prior Authorization. (1) Prior to coverage of an organ transplant, the transplant shall be determined by the department to be:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 3. General Coverage Criteria. A covered organ transplant shall meet the following criteria:

(1) A transplant surgeon’s opinion shall conclude that (effective August 1, 2006, the transplant shall be clinically appropriate pursuant to the criteria established in 907 KAR 3:130)

(a) The transplant surgeon’s opinion shall conclude that:

(i) The transplant is medically necessary in accordance with 907 KAR 3:130; and

(ii) failure to perform the transplant would create a life-threatening situation;

(2) (as) The patient’s prognosis shall indicate that there is a reasonable expectation the transplant will be successful and result in prolonged life of quality and dignity;

(3) (as) The hospital where the transplant will take place shall:

(a) Have a staffed and functioning unit designed for and accustomed to performing the planned organ transplant; and

(b) Be accredited by the Joint Commission on Accreditation of Healthcare Organizations; and

(c) Be in good standing;

1. If it is an in-state hospital, with the Cabinet for Health and Family Services; or

2. If it is an out-of-state hospital, with that state’s licensure authority [recognized as competent by the medical community]; and

(4) [as] The physician performing the transplant shall be recognized as competent by the medical community.

Section 4. Reimbursement for Organ Transplants. (1) Payment to a hospital for an organ transplant shall be at eighty (80) percent of the hospital’s usual and customary charge with total payments not to exceed $75,000 per transplant.

(2) If the payment methodology established [as set forth in subsection] (1) of this section restricts or prohibits the availability of a needed transplant procedure or service, the department’s commissioner may approve on a case-by-case basis payment that exceeds $75,000 per transplant.

(3) Reimbursement to a physician for an organ transplant shall be made in accordance with the Medicaid Physician Fee Schedule established in 807 KAR 3:010 [physician fee schedule].

Section 5. Noncovered Services. The department shall not approve a request for an organ transplant if the requested transplant:

(1) Fails to meet the criteria of Sections 2 or 3 [subsections (2) and (3) of this administrative regulation]; or

(2) Is experimental in nature. [General Coverage Criteria. The following general coverage criteria shall be applicable with regard to] organ transplants.

(a) For an organ transplant to be covered under the Medicaid Program, it must be the opinion of the transplant surgeon that the transplant is medically necessary; the failure to perform the organ transplant would create a life-threatening situation; and the prognosis must be that there is a reasonable expectation the transplant will be successful and result in prolonged life of quality and dignity.

(b) The hospital and physician performing the transplant must be recognized by the Medicaid Program as being competent to perform the transplant. A staffed and functioning unit at the hospital designed for and accustomed to performing transplants of the nature envisioned, recognized as competent by the medical community, will ordinarily be considered competent by the program.

Section 2. Reimbursement for Organ Transplants. Hospital payments for organ transplants will be at eighty (80) percent of actual usual and customary charges with total payments not to exceed $75,000 per transplant. Without regard to usual charges, hospital length of stay and hospital payments limit may be made by the Commissioner, Department for Medicaid Services, on a case-by-case basis when the maximum payment limit restricts or prohibits the availability of the needed transplant procedure or service. Physician payments for organ transplants will be at the usual Medicaid Program rate.

Section 3. Application of Organ Transplant Policy. It is the intent of the Department for Medicaid Services that the organ transplant policy be applied uniformly and consistently so that similarly situated individuals will be treated alike. To accomplish the goal the department will use the methodology specified in this section in reviewing and processing requests for coverage and payments for organ transplants.

(a) All requests for authorization for organ transplants must be sent to the Commissioner, Department for Medicaid Services.

(b) The commissioner will assign the request to appropriate staff for investigation, report, and recommendation. The report shall show whether the person requesting the transplant is Medicaid eligible. If approximately when the person will become eligible, the type of transplant requested, the name of the facility (and physician if considered necessary) where the transplant is to be performed; any fee arrangement that has been made with the facility and physician (or a statement as to whether there is a disagreement with regard to fees), and the proposed date of the transplant; the diagnosis of the condition; any other information which will be considered during the decision process.

Section 3. Application of Organ Transplant Policy. It is the intent of the Department for Medicaid Services that the organ transplant policy be applied uniformly and consistently so that similarly situated individuals will be treated alike. To accomplish the goal the department will use the methodology specified in this section in reviewing and processing requests for coverage and payments for organ transplants.

(a) All requests for authorization for organ transplants must be sent to the Commissioner, Department for Medicaid Services.

(b) The commissioner will assign the request to appropriate staff for investigation, report, and recommendation. The report shall show whether the person requesting the transplant is Medicaid eligible. If approximately when the person will become eligible, the type of transplant requested, the name of the facility (and physician if considered necessary) where the transplant is to be performed; any fee arrangement that has been made with the facility and physician (or a statement as to whether there is a disagreement with regard to fees), the proposed date of the transplant; the diagnosis of the condition; any other information which will be considered during the decision process.

Section 3. Application of Organ Transplant Policy. It is the intent of the Department for Medicaid Services that the organ transplant policy be applied uniformly and consistently so that similarly situated individuals will be treated alike. To accomplish the goal the department will use the methodology specified in this section in reviewing and processing requests for coverage and payments for organ transplants.

(a) All requests for authorization for organ transplants must be sent to the Commissioner, Department for Medicaid Services.

(b) The commissioner will assign the request to appropriate staff for investigation, report, and recommendation. The report shall show whether the person requesting the transplant is Medicaid eligible. If approximately when the person will become eligible, the type of transplant requested, the name of the facility (and physician if considered necessary) where the transplant is to be performed; any fee arrangement that has been made with the facility and physician (or a statement as to whether there is a disagreement with regard to fees), the proposed date of the transplant; the diagnosis of the condition; any other information which will be considered during the decision process.
to whether program criteria for coverage is met.
(2) After consideration of the report and recommendation the
commissioner will determine whether the general coverage criteria
are met and payments for the transplant may be made. If the decision
is to provide coverage, Medicaid program staff will assist the
recipient with necessary arrangements for the transplant. If the
decision is negative, the recipient will be notified of the manner in
which the request does not meet agency guidelines.

Section 4. Scope of Coverage. The organ transplant policy is
applicable with regard to the following types of transplant—heart,
lung, bone marrow, and liver. Other types of transplant will also be
covered under this policy upon identification and request except when special treatment of the transplant service is not considered
necessary (i.e., normal program coverage and reimbursement is
considered adequate), or when the transplant is considered by the
Department for Medicaid Services to be experimental in nature.
The Medicaid Program will not cover experimental transplants, i.e.,
those which have not previously been proven effective in resolving
the health problems for which the transplant is the proposed preferable treatment mode.

J THOMAS BADETT, MD, Ph.D., Acting Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 29, 2006
FILED WITH UGC: June 30, 2006 at 1 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street S W-B, Frankfort, Kentucky 40601, phone (502)
564-7005, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRS, November 14, 2006)

907 KAR 1:479. Durable medical equipment covered benefits
and reimbursement.

RELATES TO: KRS 205.520, 42 C.F.R. 424.57, 440 230, 441
Subpart B, 45 C.F.R. 162 1002, 42 U.S.C. 1396d(r)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1),
205 520(5), 205 560, 42 U.S.C. 1396a, b, d, e, EO 2004-726
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet
for Health Services, Department for Medicaid Services, has
responsibility to administer the Medicaid Program. [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 Services. KRS
205.520(5) authorizes the cabinet, by administrative regulation,
to comply with any requirement that may be imposed or opportuniy presented by federal law for the provision of medical assistance to Kentucky’s indigent citizen. This administrative regulation establishes the provisions regarding to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) “Certificate of Medical Necessity” or
“CMN” means a form required by the department for Medicaid
Services to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.
(2) “CMS” means the Centers for Medicare and Medicaid Services.
(3) “Covered benefit” or “covered service” means an item of
durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department [Kentucky Medicaid Program].
(4) “Customized” means that an item has been constructed, fit, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) “Date of service” means:
(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;
(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged from an inpatient hospital stay or nursing facility;
(c) For DMEPOS delivered to a recipient’s home immediately subsequent to a hospital inpatient stay, the date of final discharge; or
(d) Up to two (2) days prior to discharge from a hospital or nursing facility if:
   1. The item was provided for purposes of fitting or training of the patient;
   2. The item is ready for use in the recipient’s home; and
   3. No billing is done prior to the date of the recipient’s discharge from the facility.
(6) “Department” means the Department for Medicaid Services or its designee [designated agent].
(7) “DMEPOS” means durable medical equipment, prosthetics, orthotics, and supplies.
(8) “Durable medical equipment” or "DME" means medical equipment which:
(a) Withstands repeated use;
(b) Is primarily and customarily used to serve a medical purpose;
(c) Is generally not useful to a person in the absence of an illness or injury; and
(d) Is appropriate for use in the home.
(9) “Family choices” means a benefit plan for an Individual who:
(a) Is covered pursuant to:
   1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;
   2. 42 U.S.C. 1396a(e)(2) and 1396r - 6 (excluding children
      eligible under Part A or B of title IV, codified as 42 U.S.C. 601
      to 619 and 670 to 679b);
      1396a(a)(10)(A)(i)(IV);
      1396a(a)(10)(A)(i)(VI);
   5. 42 U.S.C. 1396a(a)(10)(A)(i)(II) as described in 42 U.S.C.
      1396a(a)(10)(A)(i)(II); or
   6. 42 C.F.R. 457.310; and
(b) Has a designated package code of 2, 3, 4, or 5 family choices as defined in 907 KAR 1:900—Section 11
(10) "Healthcare common procedure coding system" or
"HCPCS" means a collection of codes acknowledged by the
Centers for Medicare and Medicaid Services that represent procedures ["HCPCS" means the Healthcare Common Procedure Coding System].
(11) [(40)] “Home” means a place where the recipient resides excluding
(a) A nursing facility;
(b) A hospital;
(c) An intermediate care facility for individuals with mental retardation or a developmental disability (the mentally-retarded [CF-
    MR]);
(d) An institution for individuals with a mental disease [(IMD)] as defined in 42 U.S.C. 1396d(i).
(12) [(41)] “Incidental” means that a medical procedure or service
(a) Is performed at the same time as a more complex primary
    procedure or service; and
(b) Requires little additional resources; or
2. Is clinically integral to the performance of the primary procedure or service.
(13) [(42)] “Invoice price” means an itemized account of a
manufacturer’s actual charges that are billed to a supplier
for goods or services provided by the manufacturer or distributor.
(14) [(43)] “Medicaid DME Program Fee Schedule” means a
list, located at http://chfs.ky.gov/dme, containing the current Med-
icaid maximum allowable amount established by the department for
a covered item of durable medical equipment, a prosthetic, an
orthotic, or a medical supply
(15) [(44)] “Medical supply” means an item that is:
(a) Consumable;
(b) Nonreusable;
(c) Disposable; and
(d) Primarily and customarily used to serve a medical purpose.

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

(17) "Mutually exclusive" means that two (2) DMEPOS items:
(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service.
(b) Represent duplicate or very similar items; or
(c) Represent medically inappropriate use of HCPCS codes.

(18) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnoses-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20) "PReset" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's assistant who:
(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;
(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of 907 KAR 1.671 and 907 KAR 1.672;
(c) Is in good standing with the appropriate licensure board and CMS; and
(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prescription, or a recipient.

(21) "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(22) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23) "Reasonableness" means:
(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from the use of the item;
(b) The item is not substantially more costly than a medically-appropriate alternative; and
(c) The item does not serve the same purpose as an item already available to the recipient.

(24) "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(25) "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except as provided in paragraph (b) of this subsection, coverage for an item of durable medical equipment, a medical supply, a prosthesis, or an orthosis shall:
1. [ea] Be based on medical necessity and reasonableness;
2. [Effective August 1, 2006:] Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;
3. [b)(1)] Be restricted to an item used primarily in the home.
4. [e(a)] Be provided in compliance with 42 C.F.R. 440.220(c); and
5. [e(d)] Be restricted to an item used primarily in the home.

(2) In addition to the prosthetic coverage requirements established in paragraph (a) of this subsection, coverage for prosthetic devices shall not exceed $1,500 per twelve (12) month period per member (or member's family) unless the coverage limit is not met.

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for a period of five (5) years.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payer for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's prior authorization requirements and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:
(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;
(b) A MAP-1000, Certificate of Medical Necessity; or
(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Food.

(7) A CMN shall contain:
(a) The recipient's name and address;
(b) The provider's name and address;
(c) The provider’s diagnosis;
(d) The expected start date of the order;
(e) The length of the recipient's need for the item;
(f) The medical necessity for the item;
(g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and
(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a provider shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a provider shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A provider shall not bill Medicaid for a DME item, medical...
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supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only:
(a) A cane;
(b) Crutches;
(c) A standard walker;
(d) A prone or supine stander;
(e) A vest airway clearance system, excluding the generator;
(f) A noninvasive electric osteogenesis stimulator; or [and]
(g) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.
(2) The following items shall be covered for rental only:
(a) An apnea monitor;
(b) A respiratory assist device having bivalve pressure capability with backup rate feature;
(c) A generator for use with a vest airway clearance system;
(d) A ventilator;
(e) A negative pressure wound therapy electric pump;
(f) An electric breast pump;
(g) The following oxygen systems:
1. Oxygen concentrator;
2. Stationary compressed gas oxygen;
3. Portable gaseous oxygen;
4. Portable liquid oxygen; or
5. Stationary liquid oxygen; or [and]
(h) Other items designated as rental only in the Medicaid DME Program Fee Schedule.
(3) With the exception of items specified in subsections (1) or [and] (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.
(4) (a) A MAP-1001 form shall be completed if a recipient requests an item or service not covered by the department.
(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP-1001 that is not covered by the department.
(c) Completion of a MAP-1001 shall be completed as follows:
1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP-1001;
2. The recipient or authorized representative shall indicate on the MAP-1001 if the recipient chooses [whether or not they choose] to receive a noncovered service;
3. The DME supplier shall complete the supplier information on the MAP-1001;
4. The DME supplier shall provide a copy of the completed MAP-1001 to the recipient; and
5. The DME supplier shall maintain the completed MAP-1001 on file for at least five (5) years.
(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP-1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) [Special coverage items identified in this subsection shall be subject to the general coverage requirements established in Section 2 of the administrative regulation.]
(2) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:
(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and
(b) The item is prior authorized by the department.
(3) A customized DME item that is uniquely constructed or custom-fabricated to meet the medical needs of an individual recipient shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.
(4) A physical therapy or occupational therapy evaluation shall be required for:
(a) A power wheelchair; or
(b) A wheelchair for a recipient who, due to size or medical condition, is unable to be reasonably accommodated by a standard wheelchair.
(5) Orthopedic shoes and attachments shall be covered if medically necessary for:
(a) A congenital defect or deformity;
(b) A deformity due to injury; or
(c) Use as a brace attachment.
(6) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.
(7) An enteral or oral nutritional supplement shall be covered if:
(a) The item is prescribed by a licensed prescriber;
(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection [7] (69) [73] of this section, it is the total source of a recipient's daily intake of nutrients;
(c) The item is prior authorized; and
(d) Nutritional intake is documented on the CMM.
(8) An amino acid modified preparation or a low-protein modified food product shall be covered:
(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;
(b) If not covered through the Medicaid outpatient pharmacy program;
(c) Regardless of whether it is the sole source of nutrition; and
(d) If the item is prior authorized.
(9) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.
(10) An electric breast pump shall be covered for the following:
(a) Medical separation of mother and infant;
(b) Inability of an infant to nurse normally due to a significant feeding problem; or
(c) An illness or injury that interferes with effective breast feeding.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty
(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:
(a) During a period of medical need;
(b) If necessary to make the item serviceable;
(c) If no warranty is in effect on the requested repair; and
(d) In accordance with Section 6(2) of this administrative regulation.
(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.
(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:
(a) Loss of the item;
(b) Irreparable damage or wear; or
(c) A change in a recipient's condition that requires a change in equipment.
(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:
(a) An item covered for Medicaid payment through another Medicaid program;
(b) Equipment that is not primarily and customarily used for a medical purpose;
(c) Physical fitness equipment;
(d) Equipment used primarily for the convenience of the recipient or caregiver;
(e) A home modification;
(f) Routine maintenance of DME that includes:
1. Testing;
2. Cleaning;
3. Regulating; and
4. Assessing the recipient's equipment;
(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment, or [and]
(h) An item determined not medically necessary, clinically appropriate or reasonable by the department.
(2) An estimated repair shall not be covered if the repair cost equals or exceeds:
(a) The purchase price of a replacement item; or
(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.
(3) Durable medical equipment, prosthetics, orthotics and medical supplies shall include items in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following
(a) An item or repair billed to the department at $300 ($160) or more;
(b) Rental of equipment excluding oxygen services after twenty-four (24) continuous months of service;
(c) A therapeutic shoe or boot;
(d) Orthopedic shoes;
(e) An adjustment to a prosthesis or orthotic;
(f) An augmentative communication device;
(g) A customized DME item;
(h) A replacement DME item, prosthetic, or orthotic;
(i) A nutritional supplement;
(j) An amino acid modified preparation or a low-protein modified food product;
(k) A loaner item for a member-owned piece of equipment that is being repaired (Rental of a replacement wheelchair or ventilator during a repair to the recipient's primary equipment); and
(l) A DMEPOS item denoted by a general or nonspecific HCPCS code;
(m) An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;
(n) An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule; or
(o) An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.
(2) If an item requires prior authorization, a supplier shall comply with the following:
(a) Submit all required documentation prior to the date of service; or
(b) Submit a written request within seven (7) business days to the department for prior authorization which shall include the prescriber's order and
(c) After receiving acknowledgement from the department that the prior authorization request is being processed, submit to the department a completed CMN and prior authorization form within thirty (30) business days.
(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.
(b) The purchase price of the item that is to be replaced shall not exceed the maximum authorization period specified in the Medicaid DME Program Fee Schedule.

(4) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:
(a) [Effective August 1, 2006.] Clinical appropriateness pursuant to the criteria established in 507 KAR 3:13C; or
(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable [the period of medical necessity shall not exceed the maximum authorization period specified in the Medicaid DME Program Fee Schedule].

(5) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(6) For purposes of obtaining prior authorization, a signed invoice or price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:
(a) The supplier's usual and customary charge for the item;
(b) The purchase price specified in the Medicaid DME Program Fee Schedule, or
(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:
1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;
2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1048, E1161, E1220, E1229, E1231 through E1236, K0009 or K0014; or
3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015 [E1019, E1024], E1028 through E1030, E2201 through E2204, E2200, [through E2301, E2310, through E2311, E2311, E2320 through E2330, E2340 through E2343, E2399, E2601 through E2801, K0108, K0560 through K0689 or L8499.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.
(b) The department shall post HCPCS code charge information on its website at http://chfs.ky.gov/dma. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) In accordance with 907 KAR 1:604, if a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604 (reimbursement shall be reduced by the amount of the copayment).

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) Reimbursement for the purchase of an item that is currently being rented shall be:
(a) For an item that has been rented for less than three (3) months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; or
(b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:
(a) The rental price specified in the Medicaid DME Program Fee Schedule; or
(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:
   1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or
   2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(7) Except for [With the exception of] an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lesser of:
(a) The supplier's usual and customary charge; or
(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:
(a) Shipping and handling;
(b) Delivery and pickup;
(c) Setup;
(d) Routine maintenance; and
(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:
(a) Acquisition cost and applicable design and construction;
2. 42 U.S.C. 1396a(a)(52) and 1396-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679(b));
5. 42 U.S.C. 1396a(a)(10)(A)(III) as described in 42 U.S.C.
6. 42 C.F.R. 457.310; and
7. *Global choices* means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
(c) Blind individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
2. SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
(d) Disabled individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
3. Disabled individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
4. Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
5. Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
6. Pregnant women;
7. *Global choices* means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
3. Disabled individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
4. Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
5. Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
6. Pregnant women;
7. *Global choices* means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
3. Disabled individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
4. Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
5. Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
6. Pregnant women;
7. *Global choices* means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unemployment;
(b) Individuals aged sixty-five (65) and over who receive SSI and:
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
2. SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
3. Disabled individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
4. Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
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(14) as defined in 807 KAR 1:030. Section 11 is a benefit package for individuals who meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 807 KAR 1:030. who receive services through either an intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 807 KAR 1:029, or who receive services through the Supports for Community Living Waiver Program in accordance with 807 KAR 1:145.

(15) (a) "Physical therapy" means physical therapy as defined in KRS 327.010, as covered by the department, and provided by a physical therapist as defined in KRS 327.010 and as covered by the department.

(b) (b) "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists which has a more favorable cost to the department and which physicians are encouraged to prescribe, if medically appropriate, and is available via the department's supplemental rebate program pursuant to 807 KAR 1:019.

(16) "Optional eligibility group" means a group whose coverage is:

(a) Not identified as mandatory under 42 U.S.C. 1396a(a); and

(b) Established as optional pursuant to 42 U.S.C. 1396a(a) or 42 U.S.C. 1396a(a).

(17) (a) "Premium" means an amount paid periodically to purchase health care benefits.

(b) (b) "Recipient" is defined in KRS 205.8451 and applies to [insert individual whose eligibility has been determined to allow benefits to be received under Title XIX of the Social Security Act to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XVI program in accordance with 807 KAR 1:030.] and includes any person for whom no premium is charged.

(c) (c) "Speech therapy" means the practice of speech pathology as defined in KRS 334A.020, as covered by the department, and provided by a speech language pathologist as defined in KRS 334A.020.

(d) (e) "SSP" means the State Social Security Administration program named supplemental security means.

(f) (f) "TMA" means state supplemental payments for individuals who are aged, blind, or disabled and in accordance with 802 KAR 2:015.

(g) (h) "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative to loss of earning disregards in accordance with 807 KAR 1.011, Section 5(9)(b).

Section 2. Comprehensive Choice: Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the comprehensive choices plan shall pay the copayment or coinsurance amount established in this table, with the following exceptions: choice of copayment and coinsurance amounts, except for individuals excluded pursuant to Section 6(1) of this administrative regulation, and corresponding provider reimbursement deductions:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Copayment or Coinsurance Amount</th>
<th>Amount of Copayment or Coinsurance Deducted from Provider Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute inpatient hospital admission</td>
<td>$10 co-payment</td>
<td>$10 co-payment</td>
</tr>
<tr>
<td>Outpatient hospital or ambulatory surgical center visit</td>
<td>$3 copayment</td>
<td>$3 copayment</td>
</tr>
<tr>
<td>Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage</td>
<td>$1 copayment</td>
<td>$1 copayment</td>
</tr>
<tr>
<td>Preferred brand name drug</td>
<td>$2 copayment</td>
<td>$2 copayment</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Benefit</th>
<th>Copayment or Consequence Amount</th>
<th>Amount of Copayment or Consequence Deducted from Provider Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allergy service or testing (no copayment exists for infections)</td>
<td>$2 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists</td>
<td>$1 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Preferred brand name drug</td>
<td>$2 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Nonpreferred brand name drug</td>
<td>$3 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Emergency room for a nonemergency visit</td>
<td>5% coinsurance up to a maximum of $5</td>
<td>No deduction</td>
</tr>
<tr>
<td>DMEPOS (Durable Medical Equipment)</td>
<td>3% coinsurance up to a maximum of $15, per item</td>
<td>The amount of the coinsurance or, if applicable, $16</td>
</tr>
<tr>
<td>Podiatry office visit</td>
<td>$2 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Ophthalmological or optometric office visit</td>
<td>$2 copayment</td>
<td>Full amount of the copayment</td>
</tr>
</tbody>
</table>

**Benefit**

- Copayment or Consequence Amount
- Amount of Copayment or Consequence Deducted from Provider Reimbursement

**Nonemergency Visit**

- A recipient shall not be liable for more than:
  - (a) $225 per calendar year for prescription drug copayments or coinsurance,
  - (b) $225 per calendar year for service copayments or coinsurance.

- The maximum amount of cost-sharing shall not exceed five percent of a family's income for a quarter.

- If a service or benefit is not listed in the comprehensive choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the comprehensive choices benefit plan.

Section 3: Family Choices Copayments and Coinsurance

(1) (a) Only KCHIP children—Medicaid Expansion Program and KCHIP—Children—Separate CHIP Program individuals, except for any individual excluded in accordance with Section 6(1), shall be family choices individuals subject to copayments or coinsurance.

(b) An individual referenced in paragraph (a) of this subsection shall pay the copayment or coinsurance amounts established in the following table, along with the following established copayment and coinsurance amounts, for individual referenced in paragraph (a) of this subsection along with corresponding provider reimbursement deductions.

### Table: Family Choices Copayments and Coinsurance

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Copayment or Consequence Amount</th>
<th>Amount of Copayment or Consequence Deducted from Provider Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute inpatient hospital admission</td>
<td>$50 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Outpatient hospital or ambulatory surgical center visit</td>
<td>$3 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Laboratory, diagnostic, or radiology service</td>
<td>$3 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Physician services (office visit)</td>
<td>$2 copayment</td>
<td>No deduction</td>
</tr>
<tr>
<td>Visit to a rural health clinic, a primary care center, or a federally qualified health center</td>
<td>$2 copayment</td>
<td>Full amount of copayment</td>
</tr>
<tr>
<td>Dental office visit</td>
<td>$2 copayment</td>
<td>No deduction</td>
</tr>
<tr>
<td>General prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage</td>
<td>$1 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage</td>
<td>$2 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage</td>
<td>$3 copayment</td>
<td>Full amount of the copayment</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Benefit</th>
<th>Copayment or coinsurance amount</th>
<th>Amount of copayment or coinsurance deducted from provide reimbursement deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute inpatient hospital admission</td>
<td>$10 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Outpatient hospital or ambulatory surgical center visit</td>
<td>$5 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Generic prescription drug or an antipsychotic drug, if no generic equivalent for an antipsychotic drug exists for a recipient who does not have Medicare Part D drug coverage</td>
<td>$1 copayment</td>
<td>Full amount of the copayment</td>
</tr>
<tr>
<td>Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage</td>
<td>$2 copayment</td>
<td>Full amount of the copayment</td>
</tr>
</tbody>
</table>

Section 5. Optimum Choices Copayments and Coinsurance

Except for an individual excluded pursuant to Section 6(41) of the administrative regulation, a recipient of the optimum choices plan shall pay the copayment or coinsurance amount established in this table, with the following: in establishing optimum choices copayment and coinsurance amounts, according to individuals excluded pursuant to Section 6(41) of the administration, service, and corresponding provider reimbursement deduction. [1]

(4) A recipient shall not be liable for more than:

(a) $225 per calendar year for prescription drug copayments or coinsurance; or
(b) $225 per calendar year for service copayments or coinsurance.

(5) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(6) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be $0 for that service or benefit for an individual in the optimum choices benefit plan.

Section 6. Copayments, Coinsurance and Premium General Provisions and Exclusions

(1) The department shall impose no cost-sharing for the following:

(a) A service furnished to an individual who has reached his or her 65th birthday, but has not turned nineteen (19) under specific circumstances and (18) years of age, required to be provided medical assistance under 42 U.S.C. 1396a(a)(19)(A)(i)(I) [Social Security Act 1992(a)(19)(A)(i)], including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 679 to 679b), without regard to age;

(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income.

(c) A service furnished to a pregnant woman if the service relates to the pregnancy or to any other medical condition which may result from the pregnancy;

(d) A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(f) [Social Security Act 1995(c)];

(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program (the-state-plan), to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

(f) An emergency service as defined by 42 C.F.R. 447.53;

(g) A family planning service or supply as described in 42 U.S.C. 1396d(f) [Social Security Act 1995(c)](e)(1)(C); or

(h) A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(19)(A)(11)(XVIII) and 1396a(a)(19)(A)(11)(XVIII) and 1396a(a)(19)(A)(11)(XVIII).
492(a)(10)(A)(ii)(XVIII) and 1902(la).

(a) The department has determined that any individual liable for a copayment, coinsurance amount or premium shall:
   (1) Be able to pay a required copayment, coinsurance amount or premium; and
   (2) Be responsible for a required copayment, coinsurance amount or premium.

(b) A provider shall not waive a copayment, coinsurance amount or premium obligation as imposed by the department for a recipient.

(c) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396a(k)(6), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer shall not make a copayment or coinsurance amount for a copayment.

(d) A parent or guardian shall be responsible for a copayment, coinsurance amount or premium imposed on a dependent child under the age of twenty-one (21).

(e) Provisions regarding a provider’s ability to deny a service or benefit on a recipient’s failure to make a required copayment or coinsurance payment shall be as established in KRS 205:631(24) and 2006 Ky. Acts ch. 252 (HB 380) of the 2006-GA and in accordance with Pub. L. 109-171.

(f) A provider (i) shall collect from a recipient the full copayment, coinsurance amount, or premium as imposed by the department for a recipient in accordance with this administrative regulation; and
   (ii) shall not lower the full copayment, coinsurance amount, or premium at the time a benefit is provided or at a later date.

(g) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397a to 1397t, shall be limited to five (5) percent of the annual family income.

(h) A monthly premium for a family who receives benefits under 42 U.S.C. 1396-b(6) shall not exceed three (3) percent of:
   (1) The family’s average gross monthly income; or
   (2) The family’s average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(i) The department shall not increase its reimbursement to a provider to offset an uncollected copayment, coinsurance amount or premium from a recipient.

(j) The copayment and coinsurance provisions established in the administrative regulation shall supersede any copayment or coinsurance provision in any other department administrative regulation.

(k) Except as excluded in subsection (l), the department shall require a prescription drug copayment from a Medicaid recipient in a mandatory eligibility group as follows:
   (1) One (1) dollar for a generic drug prescription and the department shall reduce the provider’s reimbursement by one (1) dollar.
   (2) One (1) dollar for an atypical anti- psychotic drug prescription if the atypical anti-psychotic drug has no generic equivalent.
   (3) Two (2) dollars for a brand-name drug prescription if the brand-name drug has no generic equivalent and the brand-name drug is available under the supplemental rebate program. The department shall reduce the provider’s reimbursement by one (1) dollar.
   (4) Three (3) dollars for a nonpreferred brand-name drug prescription and the department shall reduce the provider’s reimbursement by three (3) dollars.
   (5) Three (3) dollars for an atypical anti-psychotic drug prescription if the atypical anti-psychotic drug has no generic equivalent. The department shall reduce the provider’s reimbursement by three (3) dollars.
   (6) Ten (10) dollars for a brand-name drug prescription if the brand-name drug has no generic equivalent and the brand-name drug is not available under the supplemental rebate program. The department shall reduce the provider’s reimbursement by ten (10) dollars.
   (7) Twenty (20) dollars for a nonpreferred brand-name drug prescription and the department shall reduce the provider’s reimbursement by twenty (20) dollars.

Section 3—Service Copeymonts. Except as excluded in Section 4 of this administrative regulation, the department shall require a service copayment from a Medicaid recipient as follows:

(1) Two (2) dollars per recipient per visit for any visit to a physician office, advanced registered nurse practitioner office, physician assistant office, rural health clinic, primary care center or federally qualified health center regardless of the type of provider that provides a service during the visit. The department shall not reduce the provider’s reimbursement by the amount of the copayment.

(2) Two (2) dollars per recipient per visit to any of the following types of providers:
   (a) An audiologist; or
   (b) An optometrist;
   (c) A dentist; or
   (d) A hearing aid-distributor;
   (e) An anesthetist;
   (f) A podiatrist; or
   (g) A general ophthalmologist;

(3) The department shall reduce the provider’s reimbursement by one (1) dollar for each visit or service identified in paragraphs (a) through (g) of this subsection.

(4) The department shall reduce the provider’s reimbursement by two (2) dollars per recipient per visit to any visit to an outpatient hospital, excluding a visit for treatment of an emergency condition. The department shall reduce the provider’s reimbursement by three (3) dollars.

(5) The department shall reduce the provider’s reimbursement by three (3) dollars per recipient per visit to an inpatient hospital or outpatient hospital for treatment of a nonemergency condition. The department shall reduce the provider’s reimbursement by three (3) dollars.

(f) Fifty (50) dollars per recipient for an recipient for a hospital admission including a direct admission as well as any admission resulting from a transfer.

(g) The department shall reduce the provider’s reimbursement by fifty (50) dollars per recipient.

Section 4—Copayment Exclusions and Limits and Recipient and Provider Responsibilities.

(1) The following annual copayment limits, based on a calendar year, shall apply:
   (a) A recipient shall not be liable for more than $225 in prescription drug copayments per calendar year; and
   (b) A recipient shall not be liable for more than $225 in service copayments per calendar year.

(2) The following shall not be subject to copayments:
   (a) Exclusions established in KRS 205:631, 42 C.F.R. 447.63 or 457.63;
   (b) A service provided to a recipient who has reached his or her 18th birthday but has not turned nineteen (19); or
   (c) A service provided to a recipient residing in a long-term care facility.

(3) An individual receiving services via any of the department’s home and community based waiver service programs shall:
   (a) Be subject to prescription drug copayments; and
   (b) Not be subject to service copayments.

(4) Unless excluded in subsection (3) of this section, the department has determined that each Medicaid recipient should be able to pay a required copayment, and shall be responsible for a copayment.

(5) The department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

(6) Cumulative cost sharing for premium payments and co-
payments for a family with children who receive benefits under Title XVII (42 U.S.C. 1397a to 1397g), shall be limited to five (5) percent of the average monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

Section 5. Provisions for Collection of Copayments.
(1) A provider shall collect a copayment from a recipient in accordance with Sections 2, 3, and 4 of this administrative regulation.
(2) A provider may collect a copayment at the time a service is provided or at a later date.
(3) A provider shall not refuse to provide a service if a recipient is unable or prove a required copayment. This provision shall not:
(a) Relieve a recipient of an obligation to pay a copayment;
(b) Prevent a provider from attempting to collect a copayment.
(4) If it is the routine business practice of a provider to terminate future services to an individual with an uncollected debt, the provider may include uncopayments in the uncopayment services.
(5) A provider shall give advanced notice to a recipient with an uncopayment debt before services can be terminated.
(6) A provider shall not waive a copayment obligation as imposed by the department for a recipient.
(7) A pharmacy provider or supplier, including a pharmaceutical manufacturer, shall not make a copayment for a recipient.
(8) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(1) The department shall require a family with children participating in the KCHIP Separate [Insurance] Program shall to pay a premium of twenty (20) dollars per family, per month.
(2) The family of a new KCHIP Separate [Insurance] Program eligible shall be required to pay a premium beginning with the full month of benefit after the month of application.
(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.
(3) Retroactive eligibility as described in 907 KAR 1:605, Section 4(4), shall not apply to a recipient participating in the KCHIP Separate [Insurance] Program.
(4) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.
(b) A KCHIP Separate [Insurance] Program recipient shall be eligible for reenrollment upon payment of the missed premium.
2. If twelve (12) months have elapsed since a missed premium, a KCHIP Separate [Insurance] Program recipient shall not be required to pay the missed premium before reenrollment.

(1) A family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than one hundred percent of the federal poverty limit, shall pay a premium of thirty (30) dollars per family, per month.
(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis.

(a) An immediate family member living in the home was institutionalized or died during the payment period;
(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;
(c) The caretaker relative was out of town for the payment period; or
(d) The family moved and reported the move timely, but the move resulted in:
1. A delay in receiving the billing notice; or
2. Failure to receive the billing notice.

Section 9. [8] Notices and Collection of Premiums
(1) Premiums shall be collected in accordance with Sections 7 and 8 of this administrative regulation.
(2) The department shall give advance written notice of the:
(a) Premium amount, and
(b) Date the premium is due.
(3) To continue to receive benefits, a family shall pay a premium:
(a) In full, and
(b) In advance.
(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

(1) A managed care entity:
(a) Shall not impose, on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705, a copayment, coinsurance or premium that exceeds a copayment, coinsurance or premium established in this administrative regulation, and
(b) May impose upon a recipient referenced in paragraph (a) of this subsection.

1. A lower copayment, coinsurance or premium than established in this administrative regulation; or
2. No copayment, coinsurance or premium if a copayment is imposed on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705, it shall be in accordance with the limitations and provisions established in this administrative regulation.

Section 11. [10] Freedom of Choice
In accordance with 42 C.F.R. 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(1) The department shall give written notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.
(2) If a family’s income has declined, the family shall submit documentation showing the decline in income.
(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 7 or 8 of this administrative regulation using the new income level.
(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 7(4)(a) or 8(2) (64)(a) or 7(2) of this administrative regulation.
(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.
(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.
(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
-1574-
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-S, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7737.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(As Amended at ARRS, November 14, 2006)


RELATES TO: KRS 205.520, 42 C.F.R. 440.100, 447.200-205, 205.520(3); 42 U.S.C. 1395a-d
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3); 42 U.S.C. 1395a-d
NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-726], effective July 4, 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 the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the method for determining the amount payable by the cabinet for a dental service.

Section 1. Definitions. (1) "Comprehensive orthodontic procedure" means a medically necessary dental service for a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a procedure that is performed:
(a) For removing thick or dense deposits on the teeth which is needed if the tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infection, or faulty gum disease; and
(b) Separately from a cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque and calculus.

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

(5) "Disabling malocclusion" means a patient has a condition that meets the criteria established in 907 KAR 1:26; Section 13(7).

(a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;
(b) Has a true anterior-open bite that does not include:
1. One (1) or two (2) teeth slightly out of occlusion; or
2. Where the incisors have not fully erupted;
(c) Demonstrates a significant antero-posterior discrepancy
(Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);
(d) Has an anterior open bite that involves:
1. More than two (2) teeth in crossbite;
2. Obvious angular impingement;
3. Recession related to the crossbite;
(e) Demonstrates handicapping posterior transverse discrepancy which may include several teeth; one (1) of which shall be a molar and is handicapping in a function fashion as follows:
1. Functional shift;
2. Facial asymmetry;
3. Complete buccal or lingual crossbite; or
4. Speech concern;
(f) Has a significant posterior open bite that does not involve:
1. Partially erupted teeth; or
2. One (1) or two (2) tooth slightly out of occlusion;
(g) Except for third molar, has impacted tooth that will not erupt into the arch without orthodontic or surgical intervention;
(h) Has extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal-condensing-specific in paragraph (a) through (g) of this subsection;
(i) Has trauma or injury resulting in severe misalignment of the tooth or alveolar structures; and
(j) Does not include simple loss of teeth with no other effects,
(k) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;
(l) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic-surgery treatment approach; or
(m) Has developmental anomalies in with several congenital presenting teeth resulting in a handicapping malocclusion or arch deformity.

(6) [49] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:
(a) Requires little additional practitioner resources; or
(b) Is clinically integral to the performance of the primary procedure.

(7) [66] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(8) [69] "Manually priced" or "MP" means that a procedure is priced according to complexity.

(9) [73] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) [68] "Mutually exclusive" means that two (2) procedures:
(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;
(b) Represent two (2) methods of performing the same procedure;
(c) Represent medically impossible or improbable use of CDT codes;
(d) Are described in CDT as inappropriate coding of procedure combinations.

(11) [69] "Prepayment review" or "PPR" means a departmental review [process] of a claim to determine if the requirements established in 907 KAR 1:26 have been met prior to authorizing payment.

(12) [49] "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(13) [49] "Provider" is defined in KRS 205.8451(7).

(14) [49] "Recipient" is defined in KRS 205.8451(9).

(15) [49] "Timely filing" means receipt of a claim by Medicaid:
(a) Within twelve (12) months of the date the service was provided;
(b) Within twelve (12) months of the date retroactive eligibility was established; or
(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(16) [49] "Usual and customary charge" means the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be the lesser of the:
(a) Dentist's usual and customary charge;
(b) Reimbursement limits specified in Sections 3 and 4 of this administrative regulation;
(c) [A] Manually-priced amount;
(d) [A] Prior authorized fee.

(2) If a rate has not been established for a covered dental service, the department shall set an upper limit for the procedure by:
(a) Averaging the reimbursement rates assigned to the service by three (3) other payer or provider sources; and
(b) Comparing the calculated average obtained from these three (3) rates to similar procedures paid by the department.

(3) If cost sharing is required, the cost sharing shall be in accordance with 907 KAR 1:604, if a copayment is required.
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Reimbursement shall be reduced by the amount of the copayment.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) A service which is not billed within timely filing requirements shall not be reimbursed.

(6) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

Section 3. Reimbursement Rates for Dental Services. (1) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient under twenty-one (21) years of age.

<table>
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<tr>
<th>Kentuckiana Medicaid Dental Services</th>
<th>Description</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
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<td>Limited oral evaluation (trauma-related injuries or acute infection only)</td>
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<td>Procedure</td>
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<td>(2) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient twenty-one (21) years of age and older (if applicable): Kentucky Medicaid Dental Services</td>
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<tr>
<td>Description</td>
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<tr>
<td>Amalgam, 4 or more surfaces</td>
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<tr>
<td>Resin, 1 surface, anterior</td>
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<tr>
<td>Resin, 2 surfaces, anterior</td>
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<tr>
<td>Resin, 3 surfaces, anterior</td>
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<td>Resin, 4 or more surfaces, anterior</td>
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<td>Resin, 1 surface, posterior</td>
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<td>Resin, 2 surfaces, posterior</td>
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<td>Resin, 3 surfaces, posterior</td>
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<td>Resin, 4 or more surfaces, posterior</td>
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<td>Prefab stainless steel crown primary</td>
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<td>Prefab stainless steel crown permanent</td>
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<tr>
<td>Prefab resin crown</td>
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<tr>
<td>Pin retention, per tooth, in add. to restoration</td>
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<td>Endodontic Procedures</td>
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<td>Pulpectomy</td>
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<td>Therapeutic pulpectomy</td>
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<td>Root canal therapy-anterior</td>
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<td>Root canal therapy bicuspid</td>
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<td>Apectectomy anterior</td>
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<tr>
<td>Apectectomy, bicuspid first root</td>
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<tr>
<td>Apectectomy, molar first root</td>
<td>$155</td>
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<tr>
<td>Apectectomy, per tooth each additional root</td>
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<td>Periodontic Procedures</td>
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<td>Full mouth debridement</td>
<td>$98.50</td>
<td>Pregnant women only</td>
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<td>Gingivectomy, gingivoplasty per quadrant</td>
<td>$259</td>
<td>PPR required</td>
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<tr>
<td>Gingivectomy, gingivoplasty per tooth</td>
<td>$104</td>
<td>PPR required</td>
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<td>Periodontal scaling and root planing per quadrant</td>
<td>$78</td>
<td>PA required</td>
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<tr>
<td>[Removable Prosthodontic Procedures]</td>
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</tr>
<tr>
<td>[Replace missing or broken teeth or denture]</td>
<td>$34</td>
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<tr>
<td>[Repair resin or denture base]</td>
<td>$42</td>
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<tr>
<td>[Repair cast framework]</td>
<td>$79</td>
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<tr>
<td>[Replace broken tooth, per tooth]</td>
<td>$189</td>
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<tr>
<td>[Replace complete maxillary denture]</td>
<td>$99</td>
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<tr>
<td>[Replace complete mandibular denture]</td>
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<tr>
<td>[Intact palatal-upper]</td>
<td>$246</td>
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<tr>
<td>[Intact palatal-lower]</td>
<td>$259</td>
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<td>Maxillofacial Prosthetic Procedures</td>
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<td>Nasal prosthesis</td>
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<td>Auricular prosthesis</td>
<td>$1,881</td>
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<td>Facial prosthesis</td>
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<td>Obturator (temporary)</td>
<td>$963</td>
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<tr>
<td>Obturator (permanent)</td>
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<td>Mandibular resection prosthesis</td>
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<tr>
<td>Speech aid - Adult [adult (-14 and over)]</td>
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<td>Palatal augmentation prosthesis</td>
<td>$1,550</td>
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<td>Palatal lift prosthesis</td>
<td>$1,836</td>
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<td>Oral surgical splint</td>
<td>$898</td>
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<tr>
<td>Unspecified maxillofacial prosthesis procedure</td>
<td>MP</td>
<td>PPR required</td>
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<td>Oral and Maxillofacial Surgery Procedures</td>
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<tr>
<td>Extracoronal deciduous tooth</td>
<td>$38</td>
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<tr>
<td>Extraction, erupted tooth or exposed root</td>
<td>$38</td>
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<tr>
<td>Surgical removal of erupted tooth</td>
<td>$72</td>
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<tr>
<td>Removal of impacted tooth (soft tissue)</td>
<td>$138</td>
<td></td>
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<tr>
<td>Removal of impacted tooth (partially bony)</td>
<td>$138</td>
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<tr>
<td>Removal of impacted tooth (completely bony)</td>
<td>$166</td>
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<tr>
<td>Removal of impacted tooth (comp. bony or unusual)</td>
<td>$171</td>
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<tr>
<td>Surgical access of an unerupted [MP]</td>
<td>PPR required</td>
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## Oral Surgery

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surgical removal of residual tooth roots</td>
<td>$83</td>
</tr>
<tr>
<td>Oroantral fistula closure</td>
<td>$104</td>
</tr>
<tr>
<td>Alveoplasty in conjunction with extraction per quadrant</td>
<td>$78</td>
</tr>
<tr>
<td>Alveoplasty not in conjunction with extraction per quadrant</td>
<td>$78</td>
</tr>
<tr>
<td>Excision of benign lesion</td>
<td>$67</td>
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<tr>
<td>Incision and drainage of abscess (introral)</td>
<td>$52</td>
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<tr>
<td>Incision and drainage of abscess (extroral)</td>
<td>$62</td>
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<tr>
<td>Removal of foreign body</td>
<td>$155</td>
</tr>
<tr>
<td>[Temporary mandibular splint therapy]</td>
<td>$424</td>
</tr>
<tr>
<td>Suture of recent small wound</td>
<td>$52</td>
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<tr>
<td>Frenulotomy</td>
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## Orthodontic Procedures

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Removable appliance therapy</td>
<td>$362</td>
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<tr>
<td>Fixed appliance therapy</td>
<td>$250</td>
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<tr>
<td>[Orthodontic-exam and treatment plan]</td>
<td>[PA-Fee]</td>
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<tr>
<td>[Orthodontic treatment]</td>
<td>[PA-Fee]</td>
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<tr>
<td>[Unspecified orthodontic procedure-final ap]</td>
<td>[PA-Fee]</td>
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## Adjunctive General Services

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Fee</th>
</tr>
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<tbody>
<tr>
<td>Palliative treatment of dental [oral] pain</td>
<td>$21</td>
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<tr>
<td>Intravenous- sedation</td>
<td>$123</td>
</tr>
<tr>
<td>Hospital call</td>
<td>$52</td>
</tr>
</tbody>
</table>

(3) A comprehensive orthodontic procedure shall be reimbursed as follows:

(a) Except as specified in paragraph (b) of this subsection, an orthodontic consultation, including examination and development of a treatment plan, $112;

(b) The Medicaid reimbursement rate for an orthodontic consultation shall not exceed sixty-five ($65) dollars if:
   1. The provider determines that comprehensive orthodontic treatment services are not needed;
   2. The provider is unable or unwilling to provide the needed orthodontic treatment services; or
   3. Prior authorization for comprehensive orthodontic services is not approved by the department or is not requested by the provider,

(c) A service for an early phase of moderately severe or severe disabling malocclusion:
   1. $1,287 for an orthodontist; or
   2. $1,234 for a general dentist;

(d) A service for a moderately severe disabling malocclusion:
   1. $1,825 for an orthodontist; or
   2. $1,059 for a general dentist;

(e) A service for a severe disabling malocclusion:
   1. $3,000 total ($2,754) for an orthodontist, or
   2. $2,674 total ($2,468) for a general dentist

(3) Reimbursement for comprehensive orthodontic treatment shall consist of two (2) payments:[1]

(a) The first payment shall be two-thirds (2/3) of the prior authorized payment amount.[2]

(b) The second payment shall:
   1. Be one-third (1/3) of the prior authorized payment amount, and
   2. Not be billed until six (6) monthly visits are completed following the banding date.[1] and

(c) The two (2) payments shall be inclusive of all services associated with the comprehensive orthodontic treatment.

Section 4. Oral Surgeons. Except for a service specified in 907 KAR 1:026, Section 12(6), a service provided by an oral surgeon shall be reimbursed in accordance with 907 KAR 3:010

Section 5. Supplemental Payments. (1) In addition to a payment made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a denial school faculty dentist who is employed by a state-supported school of dentistry in Kentucky.

(2) The supplemental payment shall be:
   (a) In an amount which, if combined with other payments made in accordance with this administrative regulation, does not exceed the dentist's charge for a service he has provided:
      1. As a dental school faculty; and
      2. For which the payment is made directly or indirectly to the dental school;
   (b) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of dentistry in Kentucky; and
   (c) Made on a quarterly basis.

Section 6. Appeal Rights. 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.

MARK D. BIRDWELL STELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 12, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-D, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Health and Family Services
Division of Administration and Financial Management
(Amended at ARR5, November 14, 2006)

907 KAR 1:000. KyHealth Choices benefit plans [Package].

RELATES TO: KRS 205.520, 205.560, 205.6312, 205.6481-6487, 205.6541, 319A.010, 319A.010, 334A.020, 334A.020, 20 C.F.R. 416.201, 42 C.F.R. 433.56, 436.3, 440.30, 440.40, 440.50, 440.70, 440.110, 440.120, 440.130, 440.170, 441.20, 441.21, 441.35, 441.40, 457.310, 45 C.F.R. 233.100, 42 U.S.C. 416, 416, 1382c, 1383c, 1396a, b, c, d, o, r-6, r-8, 1396a(1)(A), 1396a(5)(A), 1396a(6), 1396a(11)(A)(B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (R), (S), (T), (U), (V), (W), (X), (Y), (Z), 1961, 2006 GA HB 383.


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 citizens. This administrative regulation is authorized by KRS 194A.030(2), 194A.060(1), 205.520(3) and Pub. L. 109-171. It establishes the Medicaid Program KyHealth Choices benefit plans [packages].

Section 1. Definitions. (1) "[A]bb[erne]-waver" means the department's Approved Brain Injury Waiver Program.

(2) "Benchmark plan" means the Global Choices.

(3) "[B]enefit plan" means the health plan provided to recipients under comprehensive choices, family choices, global choices, and optimum choices.

(4) "Caregiver relative" means a relative:
   (a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and
   (b) Who is seeking to qualify as a kinship caregiver.

Section 2. The following definitions shall apply:

(1) "[C]ategorical needy children" means individuals under eighteen (18) years of age receiving Title IV-E benefits, SSP, or Section IV-A benefits, or who would have been eligible to receive Title IV-E benefits
prior to July 16, 1996.

(a) Comprehensive choices means a benefit plan [package] for an individual who:
(1) Meets the nursing facility patient status criteria established in 907 KAR 1:022;
(2) Receives services through either:
   1. A nursing facility in accordance with 907 KAR 1:022;
   2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:000;
   3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or
   4. The Model Waiver II Program in accordance with 907 KAR 1:555; and

(b) Individuals who meet the nursing facility patient status criteria established in 907 KAR 1:022, receive services through either a nursing facility in accordance with 907 KAR 1:022, the Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:000, the Home and Community Based Waiver Program in accordance with 907 KAR 1:160 or the Model Waiver II Program in accordance with 907 KAR 1:555 and consists of individuals designated with a package code of F, G, H, I, J, K, L, M, O, P, Q, R, S, T, U, V, W, X, Y, or Z.

(c) "Department" means the Department for Medicad Services or its designee.

(d) "Family choices" means a benefit plan [package] for an individual who:
(1) Is covered pursuant to:
   1. 42 U.S.C. 1396a(a)(10)(VII) and 1396u-1;
   2. 42 U.S.C. 1396a(a)(V) and 1396u-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679B); and
   3. 42 U.S.C. 1396a(b)(1)(A)(i)(IV) as described in 42 U.S.C. 1396a(b)(1)(B);
(2) Has a designated [individuals covered pursuant to: Section 1902(a)(10)(A)(i) and 1931 of the Social Security Act, Section 1902(a)(6) and 1925 of the Social Security Act (excluding children eligible under Part A and E of title IV), Section 1902(a)(10)(A)(iv)

(19) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, E, F, or G and who are included in one of the following populations:
(1) Caretaker relatives who:
   1. Receive K-TAP and are deceased due to death, incapacity, or absence;
   2. Do not receive K-TAP and are deceased due to death, incapacity, or absence; or
   3. Do not receive K-TAP and are deceased due to unemployment;
(2) Individuals aged sixty-five (65) and over who receive SSI and:
   1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
   2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(3) Blind individuals who receive SSI and:
   1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or
   2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(4) Disabled individuals who receive SSI and:
   1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or
   2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(5) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(6) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(7) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and who [shall be] for the following populations:
   (a) Caretaker relatives of children who:
      1. Receive K-TAP and are deceased due to death, incapacity, or absence;
      2. Do not receive K-TAP and are deceased due to death, incapacity, or absence; or
      3. Do not receive K-TAP and are deceased due to unemployment;
   (b) Individuals aged sixty-five (65) and over who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
   (c) Blind individuals who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
   (d) Disabled individuals who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(8) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(9) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and who [shall be] for the following populations:
   (a) Caretaker relatives of children who:
      1. Receive K-TAP and are deceased due to death, incapacity, or absence;
      2. Do not receive K-TAP and are deceased due to death, incapacity, or absence; or
      3. Do not receive K-TAP and are deceased due to unemployment;
   (b) Individuals aged sixty-five (65) and over who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      3. Disabled individuals who receive SSI and:
         1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
         2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(10) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(11) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(12) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and who [shall be] for the following populations:
   (a) Caretaker relatives of children who:
      1. Receive K-TAP and are deceased due to death, incapacity, or absence;
      2. Do not receive K-TAP and are deceased due to death, incapacity, or absence; or
      3. Do not receive K-TAP and are deceased due to unemployment;
   (b) Individuals aged sixty-five (65) and over who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
   (c) Blind individuals who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
   (d) Disabled individuals who receive SSI and:
      1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
      2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(13) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(14) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(15) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(16) Pregnant women.
(17) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
   (a) Death;
   (b) Continued voluntary or involuntary absence;
   (c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
   (d) Unemployment of one (1) parent if both parents are in the home.
(10) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with KRS 331.330.

(11) "Model Waiver II" means a department program established in KRS 207 KAR 1:595.

(12) "Nonemergency wait time" means a wait-to-treatment of a condition which does not require an emergency-service pursuant to KRS 331:427.53.

(21) "Nonpreferred brand-name drug" means a brand-name drug that is not on the department's preferred drug list pursuant to KRS 207 KAR 1:019.

(22) "Occupational therapy" means the practice of occupational therapy pursuant to KRS 316A 010(2), as covered by the department and provided by an occupational therapist as defined in KRS 316A 010(3).

(23) "Optimum choices" means a benefit plan [package] for an individual who:

(a) Meets the Intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in KRS 207 KAR 1:022;

(b) Receives services from either:

1. An Intermediate care facility for individuals with mental retardation or a developmental disability in accordance with KRS 207 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with KRS 207 KAR 1:145; and

(c) Has a documented package code of individuals who meet the Intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in KRS 207 KAR 1:022, who receive services through either an Intermediate care facility for individuals with mental retardation or a developmental disability in accordance with KRS 207 KAR 1:022, or who receive services through the Supports for Community Living Waiver Program in accordance with KRS 207 KAR 1:145 and is consistent with a package code of P.S.T. J.U.V. W. X. Z. O. or 1.

(12) "Package code" means a unique code which identifies a specific service under each benefit plan.

(13) "Other populations" means SSI individuals, caretaker relatives, and individuals eligible through the department's Breast and Cervical Cancer Treatment Program pursuant to KRS 327 010(8) who are subject to co-payment or coinsurance.

(24) "Physical therapy" means physical therapy as defined in KRS 327 010(4), as covered by the department, and provided by a physical therapist as defined in KRS 327 010(2) and as covered by the department.

(25) "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists and is available via the department's supplemental rebate program pursuant to KRS 207 KAR 1:019.

(27) "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI Program in accordance with KRS 207 KAR Chapters 1 through 4.

(14) "SSI waiver" means the department's Supports for Community Living Waiver Program established in KRS 207 KAR 1:145.

(23) "Speech therapy" means the practice of speech pathology as defined in KRS 334A 020(4), as covered by the department, and provided by a speech-language pathologist as defined in KRS 334A 020(9).

(30) "SSS" means the Social Security Administration program called supplemental security income.

(15) "SSDI" or "SSP" means state supplemental payments for individuals who are aged, blind or disabled and in accordance with KRS 207 KAR 2 015.

Section 2. Benefit Plan [Package] Assignment. (a) The department shall assign each recipient, including those excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(A), to an [the] appropriate benefit package. The four (4) benefit plans shall include: [1] comprehensive choices, family choices, global choices, or optimum choices - pursuant to the definitions established in Section (14), (6), (7), and (11) [146], (8), (9), (10)] and

(18) "(23), and based on the recipient's medical needs or circumstances.

(b) An individual excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B): 1. May enroll in the benchmark plan; and

2. Shall be subject to the cost-sharing service, and any other provisions established for the benchmark plan effective beginning with the date the individual requested to be enrolled in the benchmark plan.

(22) (a) The provisions established in the administrative regulation shall apply to a recipient except for cost-sharing provisions, unless superseded by any contrary provision established in any other department administrative regulation if any contradiction exists.

(b) If any cost-sharing provision established in the administrative regulation differs from a cost-sharing provision established in KRS 207 KAR 1:040, the cost-sharing provision established in KRS 207 KAR 1:040 shall supersede the cost-sharing provision established in this administrative regulation.

(c) If a recipient's medical needs or circumstances evolve to the extent another benefit plan is more appropriate, the department shall [may] assign the recipient to the [any] more appropriate benefit plan [package].

(3) (21) (a) A recipient whose medical needs or circumstances are appropriate for the comprehensive or optimum choices benefit plan [package] may elect not to be assigned to the comprehensive or optimum choices benefit plan [package].

(4) (15) (a) A recipient may request to be assigned to a different benefit plan [package] by notifying the department.

(b) If a recipient requests to be assigned to a different benefit plan [package], the department shall examine the recipient's medical needs or circumstances and determine the appropriateness of placement [if] the individual shall be placed in a different benefit plan [package].


(1) Benefit plan covered service provisions shall be as established in the respective program administrative regulations located in Title 907 KAR.

(2) Benefit plan cost-sharing provisions shall be as established in KRS 207 KAR 1:040.

Section 4. Appeals. A recipient may appeal a department decision in accordance with the KRS 207 KAR 1:550. [Comprehensive Choice].

(1) Following is a grid establishing the comprehensive choices benefit package provisions.

<table>
<thead>
<tr>
<th>Benefit</th>
<th>NF Level of Care (including AB1 waiver, Model Waiver II, and HCB Waiver)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Out-Patient Annual Non-pharmacy Cost-Sharing Maximum</td>
<td>$250 per calendar year</td>
</tr>
<tr>
<td>Annual Pharmacy Benefit Cost-sharing Maximum</td>
<td>$250 per calendar year</td>
</tr>
<tr>
<td>Acute Inpatient Hospital Admission</td>
<td>$10 copay</td>
</tr>
<tr>
<td>Laboratory, Diagnostic, and Radiology Services</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Outpatient Hospital or Ambulatory Surgical Center</td>
<td>$3 copay</td>
</tr>
<tr>
<td>Physician-Office Services</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Behavioral Health Services</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Allergy Services</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Preventive Services</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Emergency Ambulance</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Dental Services</td>
<td>$0 copay</td>
</tr>
</tbody>
</table>

Clearing shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over. X-rays shall be limited to 1 set per 12.
<table>
<thead>
<tr>
<th>Benefit</th>
<th>Children of Caretaker Relative</th>
<th>Categorically Needy Child</th>
<th>KCHIP Children—Medicaid Expansion Program</th>
<th>KCHIP Children—Separate CHIP Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Nonpharmacy Benefit Cost-sharing Maximum</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
</tr>
<tr>
<td>Annual Pharmacy Benefit Cost-sharing Maximum</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
</tr>
<tr>
<td>Ambulatory Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Laboratory Tests and Radiology Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Outpatient Hospital or Ambulatory Surgical Center Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Physician Office Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Behavioral Health Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Allergy Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Preventive Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Emergency Ambulance</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Dental Services (Gestations shall be limited to 2 per 12)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
</tbody>
</table>

(2) Physician office services include services provided by physicians, certified pediatric nurse practitioners, nurse midwives, or any other provider specified by the department.

(3) Behavioral health services include mental-health rehabilitation or stabilization, behavioral support, psychological services, and inpatient psychiatric services.

(4) To be covered by the department, an occupational therapy, physical therapy, or speech therapy visit shall be prior authorized.

(5) Except for the hearing aid, eye glasses, or contact lens limit, all other limits established in this section of the administrative regulation shall be subject to the limits that the additional benefit is medically necessary.
<table>
<thead>
<tr>
<th>Service</th>
<th>Full Coverage</th>
<th>$0 copay</th>
<th>$0 copay</th>
<th>$0 copay</th>
<th>$0 copay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Planning</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Occupational Therapy (Limited to 15 visits)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Physical Therapy (Limited to 10 visits)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Speech Therapy (Limited to 15 visits)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Hospice (noninstitutional)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Nonemergency transportation (Not Covered for KCHIP Children — Separate CHIP Program)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>Not-Covered</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Chiropractic Services (Limited to 7 visits)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Prescription Drugs</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$3 copay for preferred brand-name drug</td>
<td>$3 copay for non-preferred brand-name drug</td>
<td>$1 copay for generic or atypical anti-psychotic if no generic equivalent for the atypical anti-psychotic exists</td>
</tr>
<tr>
<td>Emergency Room</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>6% coinsurance for a nonemergency visit</td>
<td>6% coinsurance for a nonemergency visit</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Hearing Aids ($1,400 maximum per ear every 36 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Audiometric Services (1 audiologist visit per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Vision Services (Eyeglasses coverage shall be limited to $400 per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Prosthesis — Durable ($1,500 maximum per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Home Health Services (Limited to 25 visits per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Durable Medical Equipment</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Early Prenatal Screening and Diagnosis (EPSPD)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Treatment (T) Services for Conditions Identified through EPSPD (Not covered for KCHIP Children — Separate CHIP Program)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>Not-Covered</td>
</tr>
<tr>
<td>Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to 007-KAR 3.140; coverage shall not be provided for KCHIP Children — Separate CHIP Program)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>Not-Covered</td>
</tr>
</tbody>
</table>

(2) Physician office services include services provided by physicians, certified pediatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.
**Section 5 - Global Choices:** Following is a grid establishing the global choices benefit package provisions:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Individuals Exempt from Cost-sharing</th>
<th>Other Populations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Nonpharmacy Benefit Cost-sharing Maximum</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
</tr>
<tr>
<td>Annual Pharmacy Benefit Cost-sharing Maximum</td>
<td>$226 per calendar year</td>
<td>$226 per calendar year</td>
</tr>
<tr>
<td>Acute Inpatient Hospital Services</td>
<td>$0 copay</td>
<td>$60 copay per admission</td>
</tr>
<tr>
<td>Laboratory, Diagnostic and Radiology Services</td>
<td>$0 copay</td>
<td>$3 copay</td>
</tr>
<tr>
<td>Outpatient Hospital or Ambulatory Surgical Center</td>
<td>$0 copay</td>
<td>$3 copay</td>
</tr>
<tr>
<td>Physician-Office Services</td>
<td>$0 copay</td>
<td>$2 copay</td>
</tr>
<tr>
<td>Behavioral Health Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Allergy Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Preventive Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Emergency Ambulance</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Dental Services (Cleanings shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over; X-rays shall be limited to 1 set per 12 months regardless of age)</td>
<td>$0 copay</td>
<td>$2 copay</td>
</tr>
<tr>
<td>Family Planning</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Occupational-Therapy (Limited to fifteen (15) visits per 12 months)</td>
<td>$0 copay</td>
<td>$2 copay</td>
</tr>
<tr>
<td>Physical-Therapy (Limited to fifteen (15) visits per 12 months)</td>
<td>$0 copay</td>
<td>$2 copay</td>
</tr>
<tr>
<td>Speech-Therapy (Limited to 10 visits per 12 months)</td>
<td>$0 copay</td>
<td>$1 copay</td>
</tr>
<tr>
<td>Hospice (Noninstitutional)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Nonemergency Transportation</td>
<td>$0 copay</td>
<td>$9 copay</td>
</tr>
<tr>
<td>Chiropractic Services (Children under the age of 21 limited to 7 visits per 12 months; Adults aged 21 and older limited to 16 visits per 12 months)</td>
<td>$0 copay</td>
<td>$2 copay</td>
</tr>
<tr>
<td>Prescription Drugs for Recipients who do not have Medicare Part D Coverage (limited to 4 prescriptions per month with a maximum of 3 brand-name drug prescriptions)</td>
<td>$0 copay</td>
<td>$1 copay for generic or atypical antipsychotic if no generic equivalent for the atypical antipsychotic exists; $2 copay for preferred brand-name drug; 5% coinsurance for nonpreferred brand-name drug</td>
</tr>
<tr>
<td>Emergency Room</td>
<td>$0 copay</td>
<td>8% coinsurance for a nonemergency visit</td>
</tr>
<tr>
<td>Hearing Aids (All hearing services shall be limited to children under age 21)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Hearing Aides (Coverage shall be limited to children under age 21 and to $1,400 per ear every 36 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Audiology Services (Coverage shall be limited to children under age 21 and to 1 audiology visit per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Vision Services (All vision services coverage shall be limited to children under age 21: Eyeglass coverage shall be limited to $200 per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Prosthetic Devices</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Home Health Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Durable Medical Equipment</td>
<td>$0 copay</td>
<td>3% coinsurance—not to exceed $15 per month</td>
</tr>
<tr>
<td>Early-Periodic Screening and Diagnosis (EPSD)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Treatment (7) Services for Conditions Identified through EPSD (Coverage shall be limited to children under age 21)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Substance Abuse Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Substance Abuse Services (Coverage shall be limited to EPSDT services and to women pursuant to KAR 3-110)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
</tbody>
</table>
Maternity Services  
(Coverage shall include: nurse-midwife service, pregnancy-related services, services for other conditions that might complicate pregnancy or up to 60 days postpartum pregnancy-related services)  
$0 copay  
$0 copay

Pediatrics Services  
$0 copay  
$0 copay

End Stage Renal Disease and Transplants  
$0 copay  
$0 copay

(2) Physician-office services includes services provided by physicians, certified pediatric and family nurse practitioners, nurse midwives, federally qualified health centers, rural health clinics, primary care centers, advanced registered nurse practitioners, and physician assistants.

(3) Behavioral health services include mental health rehabilitation or stabilization, behavioral support, psychological services, and inpatient psychiatric services.

(4) To be covered by the department, an occupational therapy, physical therapy, or speech therapy visit shall be prior authorized.

(6) Except for the hearing aid coverage monetary limit, the eyeglass coverage monetary limit, and any-age limit, the limits established in this section shall be soft so that they may be overridden if the department determines that the additional benefit is medically necessary.

Section 6. Optimum Choices. (1) Following is a grid establishing the optimum choice benefit package provisions:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>ICF-MR-DD Level of Care (including SCL waivers)</th>
<th>$0 copay</th>
<th>$0 copay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical—Out-of-Pocket Annual Nonpharmacy Benefit Cost-sharing Maximum</td>
<td>$250 per calendar year</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Annual Pharmacy Cost-sharing Maximum</td>
<td>$250 per calendar year</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Acute Inpatient Hospital Services</td>
<td>$10 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Laboratory—Diagnosis and Radiology Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Outpatient Hospital or Ambulatory Surgical Centers</td>
<td>$3 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Physician Office Services$1</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Behavioral Health Services$2</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Allergy Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Preventive Services</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Emergency—Ambulance</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Dental Services (Cleanings shall be limited to 2 per 12 months for children under age 21 and 1 per 12 months for adults 21 and over; X-rays shall be limited to 3 per 12 months regardless of age)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Family Planning</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Occupational Therapy (Limited to 20 visits per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Physical Therapy (Limited to 30 visits per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Speech Therapy (Limited to 30 visits per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Hospice (noninstitutional)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Nonemergency—Transportation</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Chiropractic Services (Children under the age of 21 shall be limited to 7 visits per 12 months; Adults 21 and over shall be limited to 15 visits per 12 months)</td>
<td>$0 copay</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Prescription Drugs (for members who do not have Medicare Part D)</td>
<td>$1 copay for generic or atypical—antipyrine—antihisthetic if no generic equivalent for the atypical—antihisthetic—exists</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
<tr>
<td>Prescription Drugs (for Recipient who do not have Medicare Part D)</td>
<td>(Limited to 4 prescriptions per month with a maximum of 3 brand-name prescriptions)</td>
<td>$0 copay</td>
<td>$0 copay</td>
</tr>
</tbody>
</table>

Section 7. Copayment Provisions. (1) The copayments established in 907-KAR 1-064 shall supersede any copayments estab-
lished in the administrative regulation if any contradiction exists.
(2) The department shall impose no cost sharing for the following:
(a) A service furnished to an individual under eighteen (18)
years of age required to be provided—medical assistance under
Social Security Act (42 U.S.C. 1396a(a)(1)(A)(i)(I)) including services furnished
to an individual with respect to whom aid or assistance is made
available under Title IV, Part B, to children in foster care and indi-
viduals with respect to whom adoption or foster-care assistance is
made available under Title IV, Part E, without regard to age;
(b) A preventive service (for example, well-baby and well-child
care and immunizations) provided to a child under eighteen (18)
years of age required of family income;
(c) A service furnished to a pregnant woman, if the service
relates to the pregnancy or to any other medical condition which
may complicate the pregnancy;
(d) A service furnished to a terminally ill individual who is re-
ceiving hospice care as defined in Social Security Act 1986(e);
(e) A service furnished to an individual who is an inpatient in a
hospital—nursing facility, intermediate-care facility, or a medical
institution, if the individual is required, as a condition of
receiving services in the institution under the state plan, to spend
for costs of medical care that exceed the individual’s income required for personal needs;
(f) An emergency service as defined by 42 C.F.R. 447.53;
(g) A family planning service or supply as described in Social
Security Act 1986(a)(14)(C);
(h) A service furnished to a woman who is receiving medical
assistance via the application of Social Security Act 1986(a)(10)(A)(ii)(XVIII) and 1902(aa).

Section 8. Covered Service Appeals. An appeal of a department
decision regarding a covered service for a Medicaid recipient
based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:663.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at ARRS, November 14, 2006)
907 KAR 3:005. Physicians’ services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152,
415.174, 415.184, 440.50, 45 C.F.R. 160, 164, 42 U.S.C. 1320 -
1320d - 8

STATUTORY AUTHORITY: KRS 194A 030(2), 194A.050(1),
205.520(3), 205.560(1)[42 C.F.R. 440.50, 415.162, 415.174,
415.184],[EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EG 2004-
726, effective July 9, 2004, reorganized the Cabinet for Health
Services and placed the Department for Medicaid Services and the
Medicaid Program under the Cabinet for Health and Family Ser-
vices.] 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 citizens. This administrative
regulation establishes the provisions relating to physicians’ serv-
ices for which payment shall be made by the Medicaid Program
on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Common practice" means a con-
tritional partnership in which a physician assistant administers
health care services under the employment and supervision of a
physician.
(2) "Comprehensive choices" means a benefit plan for an
individual who:
(a) Meets the nursing facility patient status criteria estab-
lished in 907 KAR 1:022;
(b) Receives services through either:
1. A nursing facility in accordance with 907 KAR 1:022;
2. The Accrued Brain Injury Waiver Program in ac-
cordance with 907 KAR 9:050;
3. The Home and Community Based Waiver Program in
accordance with 907 KAR 1:180; or
4. The Model waiver II Program in accordance with 907
KAR 1:585; and
(c) Has a designated package code of F, G, H, I, J, K, L, M,
O, P, C, or R (comprehensive choices as defined in 907 KAR 1:060, Section 1);
(2) "CPT code" means a code used for reporting procedures
and services performed by physicians and published annually by
(3) [371 "Department" means the Department for Medicaid
Services or its designee [designated agent].
(4) [441 "Direct physician contact" means that the billing
physician is physically present with and evaluates, examines, treats, or
diagnoses the recipient.
(5) [551 "Emergency care" means:
(a) Covered inpatient and outpatient services furnished by
a qualified provider that are needed to evaluate or stabilize an
emergency medical condition that is found to exist using the prudent
layperson standard; or
(b) Emergency ambulance transport.
(6) [661 "EPSDT" means early and periodic screening, diagnos-
sis, and treatment.
(7) [751 "Family choices" means a benefit plan for an Individual
who:
(a) is covered pursuant to:
1. 42 U.S.C. 1396a(a)(10)(A)(ii) and 1396u - 1; or
2. 42 U.S.C. 1396a(a)(10) and 1396r - 6 (excluding children
eligible under Part A or E of Title IV, codified as 42 U.S.C. 601 to
619 and 670 to 679);
1396a(10)(A)(i)(V); or
1396a(10)(A)(ii)(V); or
1396a(10)(A)(iv); or
6. Has a designated package code of 2, 3, 4, or 5 [family
choices as defined in 907 KAR 1:650, Section 1];
(9) [771 "Global period" means occurring during the period of
time in which related preoperative, intrapartum, and postoperative
services and follow-up care for a surgical procedure are cus-
tomarily provided.
(10) "Global choices" means the department’s default bene-
fit plan, consisting of Individuals designated with a package
code of A, B, C, D, or E who are included in all of the following:
(a) Caretaker relatives who:
1. Receive K-TAP and are deprived due to death, incapac-
ity, or absence;
2. Do not receive K-TAP and are deprived due to death,
incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unem-
ployment;
(b) Individuals aged sixty-five (65) and over who receive
SSI and
1. Do not meet nursing facility patient status criteria in
accordance with 907 KAR 1:022; or
2. Receive SSI and do not meet nursing facility patient
status criteria in accordance with 907 KAR 1:022;
(c) Blind Individuals who receive SSI and:
1. Do not meet nursing facility patient status criteria in
accordance with 907 KAR 1:022; or
2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(d) Disabled individuals who receive SSI and;
1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children;
2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(g) Disabled Individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;
(h) Pregnant women [global alternative as defined in 907 KAR 1:002, Section 1];
(i) [11] [9] "Graduate medical education program" or "GME Program" means one of the following:
(a) A residency program approved by:
1. The Accreditation Council for Graduate Medical Education of the American Medical Association;
2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;
3. The Commission on Dental Accreditation of the American Dental Association;
4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association;
(b) An approved medical residency program as defined in 42 C.F.R. 413.25(b) [416.86(e)];
(j) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:
(a) Requires little additional [few additional—physician—resources; or
(b) Is clinically integral to the performance of the primary procedure.
(k) [46] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.
(l) [44] "KenPAC" means the Kentucky Patient Access and Care System.
(m) [45] "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.
(n) [45] "Locum tenens" means a substitute physician:
(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and
(b) Whose services are paid under the participating physician's provider number.
(o) [44] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(p) [46] "Medical resident" means one of the following:
(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or
(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:
1. An individual with a:
   a. Temporary license;
   b. Resident training license; or
   c. Restricted license; or
2. An unlicensed graduate of a foreign medical school.
(q) [46] "Medically exclusive" means that two (2) procedures:
(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;
(b) Represent two (2) methods of performing the same procedure;
(c) Represent medically [ ] impossible or improbable use of CPT codes; or
(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.
(r) "Optimum choices" means a benefit plan for an individual who:
(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;
(b) Receives services through either:
1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or
2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and
(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1 [see "Required choices as defined in 907 KAR 1:000, Section 1.
(d) [11] [49] "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.
(e) [148] "Physician assistant" is defined in KRS 311.840(3).
(f) [149] "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.
(g) [229] "Supervising physician" is defined in KRS 311.840(4) [means a licensed physician who directly oversees a physician assistant or other licensed medical professional].
(h) [231] "Supervision" is defined in KRS 311.840(6).
(i) [556] "Timely filing" means receipt of a claim by [ ] Medicaid:
(a) Within twelve (12) months of the date the [ ] service was [ ] provided;
(b) Within twelve (12) months of the date retroactive eligibility was [ ] established; or
(c) Within six (6) months of the Medicare adjudication date[ ], if the service was [ ] billed to Medicare.
(j) [569] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located;
(2) A participating physician shall comply with the terms and conditions established in the following administrative regulations:
(a) 907 KAR 1:005, Nonduplication of payments;
(b) 907 KAR 1:671, Conditions of Medicaid provider participation, withholding overpayments, administrative [ ] appeal [ ] process, and sanctions; and
(c) 907 KAR 1:572, Provider enrollment, disclosure, and documentation for Medicaid participation.
(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.
(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If the provider accepts the recipient, the provider:
(a) Shall bill Medicaid rather than the recipient for a covered service,
(b) May bill the recipient for a service not covered by Medicaid [as specified in Section 4 of this administrative regulation] if the physician informed the recipient of noncoverage prior to providing the service; and
(c) Shall not bill the recipient for a service that is denied by the department on the basis of:
1. The service being incidental, integral, or mutually exclusive[ , or global] to a covered service or within the global period for a covered service.
2. Incorrect billing procedures, including incorrect bundling of services;
3. Failure to obtain prior authorization for the service; or
4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:
   (a) Billed as medically necessary;
   (b) Effective August 1, 2006, clinically appropriate pursuant to the criteria established in 907 KAR 3:130;
   (c) A covered service shall be a medically necessary service which is:
      (i) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and
      (ii) Eligible for reimbursement as a physician service
   (2) Direct physician contact between the billing physician and recipient shall not be required for:
      (a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;
      (b) A service provided by a locum tenens physician who provides direct physician contact;
      (c) A radiology service, imaging service, pathology service, ultrasound study, echocardiographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;
      (d) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;
      (e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;
      (f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170; or
      (g) A service provided by a physician assistant in accordance with Section 7 (6) of this administrative regulation.
   (3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:
      (a) The individual is employed by the supervising physician;
      (b) The individual is licensed in the state of practice; and
      (c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider unless:
   (a) The service represents emergency care; or
   (b) The recipient has been referred by the "lock-in" provider.
   (2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.
   (3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.
   (4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service:
      (a) Rho (D) immune globulin injection;
      (b) An injectable antineoplastic drug;
      (c) Medroxyprogesterone acetate for contraceptive use, 150 mg;
      (d) Penicillin G benzathine injection;
      (e) Ceftriaxone sodium injection;
      (f) Intravenous immune globulin injection;
      (g) Sodium hyaluronate or hyaluronidase for intra-articular injection;
      (h) An intrauterine contraceptive device; or
      (i) An implantable contraceptive device.
   (5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F shall be covered within the scope and limitations of the [thesea] federal regulations.
   (6) Coverage for a service designated as a psychiatry service CPT code and provided by a physician other than a board certified or board eligible psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(8) Coverage for a fetal diagnostic ultrasonic procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(9) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(10) Except for an anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(11) The following services shall not be covered:
      (a) An acupuncture service;
      (b) Allergy immunotherapy for a recipient age twenty-one (21) years or older;
      (c) An autopsy;
      (d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);
      (e) Except for therapeutic bandage lenses, contact lenses;
      (f) A hysterectomy for the purpose of sterilization;
      (g) Lasik surgery;
      (h) Paternity testing;
      (i) A procedure performed for cosmetic purposes only;
      (j) A procedure performed to promote or improve fertility;
      (k) Keratotomy;
      (l) A thermogram;
      (m) An experimental service which is not in accordance with current standards of medical practice;
      (n) A service which does not meet the requirements established in Section 3(1) of this administrative regulation [has been determined not medically necessary by the department].

Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department [prior-to-reimbursement]:
   (a) Magnetic resonance imaging (MRI);
   (b) Magnetic resonance angiography (MRA);
   (c) Magnetic resonance spectroscopy;
   (d) Positron emission tomography (PET);
   (e) Cardiac catheterization;
   (f) Xeroradiography;
   (g) Ultrasound subsequent to second obstetric ultrasound;
   (h) Myocardial imaging;
   (i) Cardiac blood pool imaging;
   (j) Radiopharmaceutical procedures;
   (k) Gastric restrictive surgery or gastric bypass surgery;
   (l) A procedure that is commonly performed for cosmetic purposes;
   (m) A surgical procedure that requires completion of a federal consent form; or
   (n) An ultrasound procedure or service. [Outpatient surgery performed in an outpatient hospital setting;
   (o) Cardiac electrophysiology;
   (p) Lithotripsy;
   (q) Computed tomography (CT) imaging;
   (r) Computed tomographic angiography (CTA);
   (s) Magnetic resonance imaging (MRI);
   (t) Magnetic resonance angiography (MRA);
   (u) Magnetic resonance spectroscopy;
   (v) Positron emission tomography (PET);
   (w) Dual energy X-ray absorptiometry (DEXA);
   (x) Radiographic absorptiometry;
   (y) Nuclear cardiology;
   (z) Ultrasound subsequent to second obstetric ultrasound;
   (aa) Cardiac blood pool imaging;
   (bb) Single Photon Emission Computed Tomography (SPECT);
   (cc) Sensory nerve conduction test (SNCT);]
1. The provider shall telephone or fax the request to the department; and
2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(6) The limits established in subsections (1), (2), and (3) of this section shall not apply to a recipient under twenty-one (21) years of age, except for recipients under age twenty-one (21) prior authorization is required for each visit that exceeds the limit established in subsection (1) through (3) of this section.

Section 7. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) and (3) of this section, a [medically-necessary] service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of the administrative regulation;
(b) The service is rendered through direct patient interaction;
(c) [The service is billed under the physician’s individual provider number with the physician assistant’s number included]; and
(d) [The physician assistant complies with the following: 1. 911.840 to 911.852 (344-888); and 2. Section 2(2) and (3) of this administrative regulation regarding physician services.]

(2) A [Same] same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:
(a) A physician noncovered service specified in Section 4(10) of this administrative regulation;
(b) An anesthesia service;
(c) An obstetrical delivery service; or
(d) A service provided in assistance of surgery.

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

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:563.

(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.

MARK D. BIRDWHISTEL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 12, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: Jil Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7805, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Physician and Special Services
(As Amended at ARRS, November 14, 2006)

907 KAR 3:125. Chiropractic services and reimbursement.

RELATES TO: KRS 312.015, 312.017, 42 C.F.R. 440.230, 441 Subpart E-42 U.S.C. 1396c(e)
NECESSITY, FUNCTION, AND CONFORMITY: [EG-2004-]
Section 1. Definitions. (1) "Chiropractic service" means the diagnosis and the therapeutic adjustment or manipulation of the subluxations of the articulations of the human spine and its adjacent tissues performed by, and within the scope of licensure of, a licensed chiropractor in accordance with KRS 312.015 and 312.017.

(2) "Chiropractor" is defined in KRS 312.015(3).

(3) "Current procedural terminology code" or "CPT code" means the code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology (the identifying code used by the department for reporting clinical service or procedure data).

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

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

(a) Provided in accordance with 42 C.F.R. 440.230;
(b) Reasonable and necessary to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;
(d) Provided for medical reasons rather than primarily for the convenience of a recipient, caregiver, or provider;
(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;
(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and
(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396(r) and 42 C.F.R. 441 Subpart B for eligible recipients under twenty-one years of age.

(6) "Usual and customary charges" means the uniform amount that a medical provider charges a private-pay patient or third-party payor in the majority of cases for a specific medical procedure or service.

Section 2. Covered Services. (1) A covered chiropractic service shall include the following:

(a) An evaluation and management service;
(b) Chiropractic manipulative treatment;
(c) Diagnostic x-rays;
(d) Application of a hot or cold pack to one (1) or more areas;
(e) Application of mechanical traction to one (1) or more areas;
(f) Application of electrostimulation to one (1) or more areas;
(g) Application of ultrasound to one (1) or more areas.

(2) A chiropractic service shall be covered, including reimbursement limits, to the extent:

(a) Medically necessary;
(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130, and
(c) Except as specified in Section 3 of this administrative regulation, [a medically-necessary-chiropractic service shall be covered] [to the extent][,][ and subject to the service and reimbursement limitations][.][ that the same service is covered by the department for a physician and with the same reimbursement limits].

(3) A chiropractic service (and) shall be reported using:

(a) An evaluation and management CPT code;
(b) A chiropractic manipulative treatment CPT code;
(c) A diagnostic x-ray CPT code; or
(d) Physical modalities application CPT codes for the following:
   1. Application of a hot or cold pack to one (1) or more areas;
   2. Application of mechanical traction to one (1) or more areas;
   3. Application of electrostimulation to one (1) or more areas;
   4. Application of ultrasound to one (1) or more areas.

(4) Coverage of chiropractic services shall:

(a) Be based on medical necessity;
(b) Be limited to twenty-six (26) visits per recipient per twelve (12) month period.

(6) The visit limit shall be a hard limit, meaning the department shall not cover chiropractic visits in excess of twenty-six (26) visits per twelve (12) month period. [Unless a recipient's health-care provider demonstrates that chiropractic services in excess of the limit are medically necessary, coverage of chiropractic services shall be limited to:]

(a) Fifteen (15) chiropractic visits per year for a recipient age twenty-one (21) years or older; and
(b) Seven (7) chiropractic visits per year for a recipient under twenty-one (21) years of age.

Section 3. Prior Authorization. (1) Prior authorization from the department shall be required for reimbursement of a covered service, specified in Section 2(1) of this administrative regulation, for each chiropractic visit, including any additional visit beyond the specified limitation established in Section 2(4) of this administrative regulation [provided during a chiropractic recipient's face-to-face contact with the same provider occurring after the initial twelve (12) contacts]. If there has been an interval of at least six (6) months since the last chiropractic recipient's face-to-face contact with the same provider, up to twelve (12) additional chiropractic recipient's face-to-face contacts shall be reimbursed, if medically necessary, without prior authorization from the department.

(2) A chiropractic recipient shall request prior authorization by mailing or faxing the following information to the department:

(a) A completed Kentucky Form MAP-810, Chiropractic Prior Authorization Form; and
(b) If requested by the department, additional information required to establish medical necessity.

Section 4. [4.] Reimbursement for Covered Services. (1) A charge for a chiropractic service submitted to the department for payment shall not exceed the usual and customary charge to a private-pay patient or third-party payor for an identical procedure or service.

(2) For reimbursement of a covered service, a chiropractor shall be paid the lesser of the chiropractor's usual and customary actual billed charge or an amount determined in accordance with the Medicaid Physician Fee Schedule established in 907 KAR 3:010.

Section 5. [6.] Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance...
with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.


(2) The 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, Undersurrogate
GLENN JENNINGS, Commissioner

APPROVED BY AGENCY: October 12, 2006
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CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7805, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, November 14, 2005)

907 KAR 3:130. Medical necessity and clinically appropriate determination basis.

RELATES TO: KRS 205.520, 42 C.F.R. 440.230, 441 Subpart B, 42 U.S.C. 13964 (r)

STATUTE: AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(2), 205.560, 42 U.S.C. 1396a, b, (d), (f), 42 U.S.C. 1396d(r)

NECESSITY, FUNCTION, AND CONFORMITY: [50-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the basis for the determination of the medical necessity and clinical appropriateness of benefits and services for which payment shall be made by the Medicaid Program on behalf of both the categorically and the medically needy.

Section 1. Definitions. (1) "Clinically appropriate" means appropriate pursuant to the nationally-recognized clinical criteria known as Integural developed by McKesson Health Solutions by:
(a) For which the department has contracted; and
(b) Which is available for purchase from McKesson Health Solutions by:
   2. Calling 1-800-522-6780; or
   3. Submitting a written request to McKesson Health Solutions, 275 Grove Street Suite 1 - 110, Newton, MA 02466-2273
   [for which the department has contracted];
(2) "Covered benefit" or "covered service" means a health care service or item for which the department shall reimburse in accordance with state and federal regulations.

(3) [66] "Department" means the Department for Medicaid Services or its designee [designated agent].

(4) [67] "Medically necessary" or "medical necessity" means a covered benefit is:
(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical conditions, including pregnancy;
(b) Clinically [appropriate in terms of the service, amount, scope, and duration based on generally-accepted standards of good medical practice;]
(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;
(d) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;
(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;
(f) Provided in accordance with early and periodic screening, diagnostic, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for individuals under twenty-one (21) years of age; and
(g) Provided in accordance with 42 C.F.R. 440.230.

[66] [41] "Prudent layperson standard means the standard for determining the existence of an emergency medical condition whereby a prudent layperson who possesses an average knowledge of health and medicine determines that a medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the person could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Section 2. Medical Necessity Determination. (1) The determination of whether a covered benefit or service is medically necessary shall:
(a) Be based on an individualized assessment of the recipient's medical needs, and
(b) Comply with the requirements established in this paragraph. To be medically necessary or a medical necessity, a covered benefit shall be:
1. Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
2. Appropriate in terms of the service, amount, scope, and duration based on generally-accepted standards of good medical practice;
3. Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;
4. Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;
5. Needed, if used in reference to an emergency medical service, to exist using the prudent layperson standard;
6. Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for individuals under twenty-one (21) years of age; and
7. Provided in accordance with 42 C.F.R. 440.230 [definition of medically necessary established in Section 1(3) of this administrative regulation].

(2) The department shall have the final authority to determine the medical necessity and clinical appropriateness of a covered benefit or service and shall ensure the right of a recipient to appeal a negative action in accordance with 907 KAR 1.563.

Section 3. Criteria to Establish Clinical Appropriateness. (1) The department shall utilize criteria to determine if a given Medicaid service or benefit is clinically appropriate.

(2) The criteria referenced in subsection (1) of this section shall be the nationally-recognized clinical criteria that meets the definition established in Section 1(1) of this administrative regulation.

Section 4. Medical Director Role in Service Denials. (1) If a request for a service is denied for failing to meet medical necessity or clinical appropriateness criteria, the department's
medical director shall have the authority to reverse or approve the denial [for which the department has contracted].

(2) The letter of denial shall include the specific clinical reason that the service was denied including any appropriate interqual or other criteria.

MARK D. BIROW/HESTELL, Secretary
MIKE BURNSIDE, Undersecretary
GLENN JENNINGS, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: Jim Brown, Office of Legal Services, 275 East Main Street 5 W-D, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7673.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Support
(As Amended at AARRS, November 14, 2006)


REGULATORY AUTHORITY: KRS 194A.050(1), 203.735(1), 205.755(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [EC-2004-476, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community-Based Services under the Cabinet for Health and Family Services.] KRS 205.755(1) authorizes the secretary to prescribe the manner in which distributions of payments of support shall be made, [promulgate administrative regulations concerning distribution of payment of support] consistent with state and federal law and administrative regulations. [KRS 194A.050(1) authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.] This administrative regulation establishes procedures for distribution of child support payments.

Section 1. Allocation of income withheld payments in IV-D and non-IV-D cases. (1) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

(a) Totaling the obligor's current support obligations subject to income withholding;
(b) Dividing each current support obligation by the total amount from paragraph (a) of this subsection, to determine a percentage; and
(c) Multiplying the withheld payment received from the employer by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(2) The cabinet shall allocate the payment amount determined in subsection (1)(c) of this section to each of the obligor's current support obligation amounts subject to income withholding.

(3) If the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withholding amount among the obligor's ordered arrearages obligations subject to income withholding by:

(a) Totaling the obligor's ordered arrearages obligations subject to income withholding;
(b) Dividing the monthly arrearages obligation for each child support case by the total amount from paragraph (a) of this subsection, to determine a percentage; and
(c) Multiplying the remaining income withholding amount by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each arrearages obligation subject to income withholding.

(4) The cabinet shall allocate the payment amount determined in subsection (3)(c) of this section to each of the obligor's arrearages obligations subject to income withholding.

(5) If the obligor's current support and arrearages obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withheld amount proportionately according to subsections (1) through (4) [and (5)] of this section.

(6) Allocation of nonwage payments in IV-D and non-IV-D cases. The cabinet shall allocate nonwage payments:

(a) As designated by an obligor for a specific case, or
(b) If not designated by an obligor, by allocating a proportionate share to each of the obligor's child support cases, as determined in subsections (1) through (4) [subsection (5)] of this section.

Section 2. K-TAP and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

(a) Payable to the Division of Child Support; and
(b) Reported to the K-TAP or Kinship Care agency within ten (10) working days of the 31st of the month in which that escrow payment is disbursed to a recipient.

(2) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance payments and report the result to the child support agency.

(a) If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:

1. Distribute to the family at the end of the month the amount of child support collected; and
2. Notify the family of continuation of child support services as specified in 921 KAR 1:360, Section 1(4)(b) [Section 4(3)].

(b) Unless a hearing is requested or a case remains eligible for assistance, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the Division of Child Support; and
(2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts. (1) A tax refund intercepted from a public assistance account shall be:

(a) Applied to assigned arrearages and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or
(b) If no assigned arrearages remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or
2. Held by the cabinet for six (6) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearages; or
(b) If no assigned arrearages remains:

1. Held by the cabinet for six (6) months, if a joint income tax return is filed, before being distributed; or
2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) Within fifteen (15) calendar days of the date of resolution of an obligor's appeal contesting the accuracy of a past-due arrearage, the cabinet shall [An obligor may contest the accuracy of a past-due arrearage by requesting an administrative hearing as specified in 921 KAR 1:410. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the order amount to:

(a) The obligor, if resolution is in the obligor's favor; or
(b) The agency or family, if resolution is against the obligor.
Section 5. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family and

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Return of Overpayment. (1) If a child support overpayment is found to be due to the noncustodial parent, the amount shall be verified and, if legitimate, approved by the Division of Child Support, Accounting Branch.

(2) Upon approval by the Accounting Branch, a check writer shall be sent to the Department of Treasury for processing.

(3) A check for the approved amount of child support overpayment shall be issued to the noncustodial parent within one (1) to seven (7) days, unless the overpayment is due to a joint tax return. If the overpayment is due to a joint tax return, the approved amount shall be issued through a manual voucher.

(a) (4) Once the unobligated spouse's share of the refund has been paid; or

(b) (5) Six (6) months from notification of the federal tax offset in accordance with 45 C.F.R. 303.72(h)(5).

TOM EMBERTON, Jr., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: September 16, 2006
FILED WITH LRC: September 15, 2006 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, November 14, 2006)

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child care centers.

RELATES TO: KRS 138.125, 199.8941, 199.8943, 199.8964(4), 199.8992, 42 U.S.C. 601 to 619, 45 C.F.R. 98
STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(2)

NECESSITY, FUNCTION, AND CONFORMITY KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Family and Health Services to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for licensed child care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 138; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type I licensed child care centers, and establishes the amount of each monetary incentive awarded to a participant in the STARS for KIDS NOW Program.

Section 1. Definitions. (1) "Commonwealth Child Care Credential" means a certificate of completion of sixty (60) clock hours of instruction from a state agency-approved organization in accordance with 922 KAR 2:250, that:

(a) Includes training in the following areas:
   1. Child growth and development;
   2. Learning environments and curriculum;
   3. Health, safety, and nutrition;
   4. Family and community partnerships;
   5. Child assessments;
   6. Professional development; and
   7. Program management;
(b) Is effective for a period of one (1) year; and
(c) Is renewed upon completion of fifteen (15) hours of training.

(2) "Environment rating scale" means one (1) of four (4) rating scales designed to assess the process quality in an early childhood or school age care group, and consists of the following items to evaluate:

(a) Physical environment;
(b) Basic care;
(c) Curriculum;
(d) Interaction;
(e) Schedule and program structure; and
(f) Parent and staff education.

(3) "Infant" means a child who is less than twelve (12) months of age.

(4) "Level One Center" means a Type One Center that participates in the STARS for KIDS NOW Program. A Type One Center may achieve a quality rating of Level One through Level Four.

(5) "Parental or family participation" means involvement of a parent or custodian in a child care program's attempt to provide information or include the parent or caregiver in the program's activities, such as:

(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between a child care program's staff and a parent or caregiver; or
(d) Any other activity designed to engage a parent or caregiver in the program's activities.

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child care centers.

RELATES TO: KRS 138.125, 199.8941, 199.8943, 199.8964(4), 199.8992, 42 U.S.C. 601 to 619, 45 C.F.R. 98
STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(1), 199.8943(2)

NECESSITY, FUNCTION, AND CONFORMITY KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8943(2) requires the Cabinet for Family and Health Services to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system established by KRS 199.8943(1).

(6) "School-age" means a child attending kindergarten, elementary, or secondary education.

(7) "Provisional quality rating certificate" means a six (6) month probationary certificate issued to a new participant in the program immediately upon change of ownership of a child care center participating in the program at the time of transfer.

(8) "Resource and referral agency" means a cabinet-designated entity described at KRS 199.8992(1).

(9) "State agency" means the Cabinet for Health and Family Services.

(10) "Substitute" means a person employed by a Type I licensed child care center for a period not to exceed fourteen (14) days in a one (1) year period.

(11) "Toddler" means a child between the age of twelve (12) and twenty-four (24) months.

(12) "Type I [one] Center" means a child care center licensed by the cabinet or its designee in accordance with 922 KAR 2:170, 2:110, and 2:120 to:

(a) Care for four (4) or more children in a facility other than a residence; or
(b) Provide child care for thirteen (13) or more children in the center's provider's residence.

Section 2. Application. (1) A Type I licensed child care center may:

(a) Apply to participate in STARS [the program] after six (6)
months from the date of initial licensure; and
(b) Achieve a quality rating certificate of Level 1 through Level 4 [A center that changes ownership may continue participation in the program; if (2) an applicant seeks participation in STARS as a Level 1 quality rating certificate [one (1)-center].
(a) The applicant shall complete all:
1. "DCC-400, Level 1 Rating Certificate Application* and
(b) The cabinet or its designee [A resource and referral agency staff person] shall verify on the DCC-401 ["Level One (1)-Standards", incorporated by reference,] the center's documented compliance with the Level one (1)-center requirements described in Section 3 of this administrative regulation.
(3) If an applicant seeks a Level 2, 3, or 4 quality rating certificate, then:
(a) Applicant shall complete a "DCC-400, DCC-401, and DCC-405, STARS for Kids NOW Rating Visit Request Form*; and
(b) Cabinet or its designee:
1. Shall contact the applicant within fifteen (15) working days to schedule a STARS rating visit, upon receipt of a completed DCC-405;
2. And the applicant shall agree to a two (2) week time period in which the STARS rating visit will occur; and
3. Shall issue to an approved applicant, within sixty (60) calendar days from the date of the STARS rating visit, a quality rating certificate that shall:
   a. Be valid for a period specified in Section 8(3) of this administrative regulation; and
   b. Specify the rating level approved for the center [child-care program] as
(4) For the purpose of redetermining a center's quality rating certificate, if an applicant seeks participation as a Level two (2), three (3), or four (4) center, the applicant shall:
(a) Obtain a "STARS Rating Visit Request Form", incorporated by reference, from a resource and referral agency; and
(b) Submit the completed form to the cabinet.
(5) Upon receipt of a properly completed "STARS Rating Visit Request Form* the cabinet shall schedule a prearranged rating visit within sixty (60) calendar days. During an initial and each subsequent rating visit, an environment rating scale shall be completed for one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each of the following age groups for which the center provides care:
1. Birth to two and one-half (2-5) years of age;
2. Two and one-half (2-5) to five (5) years of age; and
3. Five (5) to twelve (12) years of age; and issue to the applicant, within sixty (60) calendar days from the date of the rating visit, a quality rating certificate that shall:
   a. Be valid for the period of one (1) year; and
   b. Specify the rating level representing a child-care center's compliance with the requirements of that level.
(6) A participant in the STARS program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit.
(5) An environment rating scale shall be completed during each rating visit for one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each of the following age groups for which the center provides care:
(a) Infant;
(b) Toddler; and
(c) Two (2) to school age. [For the purpose of redetermining the center's rating.]
(6) A center applying for or participating in the STARS program shall:
(a) Not have an immediate closure, denial of licensure, or revocation, suspension, or revocation action against the center's license; and
(b) Pay any civil penalty levied against the center if the:
1. Center has waived the right to appeal a civil penalty; or
2. Civil penalty has been upheld on appeal.
Section 3 Level 1 Quality Rating Certificate [One (1)-Center] Requirements:
(a) A Type I center:
1. Shall not be allowed to participate as a Level 1 child care center for more than a two (2) year period; and (b) After two (2) years of participation as a Level one (1)-center, the center has not achieved a level one (1)-center rating, the center shall cease to exist.
(b) May reapply for participation six (6) months after expiration of the Level one (1)-center rating certificate.
(c) A center participating in the STARS Program and holding [as] a Level 1 quality rating certificate [One (1)-center] shall:
1. Post prominently in each classroom, and maintain compliance with the:
   a. Minimum staff-to-child ratios and group size established in 922 KAR 2:120, Section 1;
2. Planned program of activities; and
3. Daily schedule.
(d) Comply with the staff requirements set forth in 922 KAR 2:110, Section 3.
(e) Ensure that the center's director or an individual with decision-making authority as such the owner, board chair, or minister, attends an overview of STARS [the program] prior to program participation.
(f) Complete an [4]-Agree-to- [a-curriculum] assessment in which at least one (1) classroom rating scale shall be used to observe each age group described in Section 2(2) [16(3)](4)(e) of this administrative regulation, under the following conditions:
1. Each assessment [environment rating scale] shall be conducted by the center's director with assistance from the cabinet or its designee, if requested [a resource and referral agency staff person], within the first twelve (12) months of participation in STARS [and]
2. [the program]; (3) A Quality Rating Certificate [center] shall not require a center's achievement of a specific score on the environment rating scale; and
3. Upon completion of the environment rating scale by the center's director during the second year of certification at [participation as a Level 1 quality rating center [one (1)-center], the director shall develop a written plan, with assistance from the cabinet or its designee, if requested, [a resource and referral agency staff person], for improved performance in each area identified by the environment rating scale as needing improvement;
(g) Post in a prominent area, the center's:
(a) Program of activities; and
(b) Daily schedule;
(h) Coordinate at least one (1) annual activity involving parent or family participation;
(i) [7] Implement an annual plan for professional development for each employee;
(j) [9] Ensure that the individual who attended the overview described in subsection (2)(c) of this section provides, to each employee who has direct supervisory authority over a child, training regarding the:
   1. (a) Licensing requirements in:
      b. [2] 922 KAR 2:110, Child care facility provider requirements; and
   c. (3) 922 KAR 2:120, Child care facility health and safety standards;
2. (b) Requirements for participation in the STARS Program;
3. (c) Early Childhood Development Scholarship Program; and
4. [9] Early Childhood Development Scholarship Program;
   (i) [9] [Not have an immediate closure, denial of licensure, or pending suspension or revocation action against its license; and
   (ii) [10] Pay any civil penalty levied against the center if the;
   1. [10] Center has waived its right to appeal a civil penalty; or
   2. [11] Civil penalty has been upheld on appeal; and
   (ii) [11] Comply with the requirements of 922 KAR 2:160, Child Care Assistance Program (CCAP).
Section 4. Level 2 Quality Rating Certificate [two- (2)] Requirements. A licensed child care center participating in STARS and holding the program-ea a Level 2 quality rating certificate [two (2)-center] shall:

1. Meet the requirements of Sections 2(3) and 3(2)(a)2 and 3, (b), (c), and (d) through (f)(6) [(i) to (9), (6), and (7) to (11)] of this administrative regulation;
2. Have in each classroom a roster that specifies the first and last name of:
   (a) The room's teacher or employee with supervisory authority over a child, and
   (b) Each child enrolled in the center and cared for in that room;
3. Coordinate at least two (2) annual activities that involve parental or family participation;
4. Provide documentation of a written plan for parental or family involvement;
5. Achieve an overall average score of at least three (3) on the environment rating scale portion of the STARS rating visit calculated based upon the total number of environment rating scales conducted during the quality rating visit;
6. If the center achieves an overall average score of three (3) on the environment rating scale, develop a written plan, with assistance from the cabinet or its designee, if requested [a resource and referral agency/staff person], to improve performance on subsequent environment rating scales;
7. Achieve and maintain an overall average score of at least four (4) on the environment rating scales (scale in the fourth [fourth] year of certification at program-ea] a Level 2 quality rating [two (2)-center];
8. Review and sign the "DCC-402, STARS for KIDS NOW: Level 2 Standards Checklist" during the STARS rating visit [Maintain an overall average score of four (4) on the environment rating scale for each year beyond the fifth year of participation as a level two (2)-center];
9. Comply with the provisions of:
   (a) 11 KAR 16:040, Early Childhood Development Scholarship Program recordkeeping requirements; and
   (b) 11 KAR 16:050, Early Childhood Development Scholarship Program system of monetary incentives;
10. Ensure that each employee or substitute who has direct supervisory authority over a child:
   (a) Receives three (3) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;
   (b) Has completed the Commonwealth Child Care Credential;
   (c) Has a Child Development Associate's Credential;
   (d) Has a Montessori Certificate; or
   (e) Has an associate or higher level of education in:
      1. Interdisciplinary early childhood education;
      2. Early childhood special education;
      3. Early childhood education;
      4. Early childhood development;
      5. Elementary education for teaching kindergarten through fourth grade, if the employee cares for school-age children; or
5. A related degree approved by the Early Childhood Development Authority;
11. Ensure that the center's director, or the person responsible for the on-site [center-on-site] operation of the center, as required by 922 KAR 2:110:
   (a) Receives six (6) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;
   (b) [After] July 1, 2004, has completed the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;
   (c) Has a Child Development Associate's Credential;
   (d) Has a Montessori Certificate, or
   (e) Has an associate degree or higher level of education in:
      1. Interdisciplinary early childhood education;
      2. Early childhood special education;
      3. Early childhood education;
      4. Early childhood development;
5. Elementary education for teaching kindergarten through fourth grade, if the director works primarily with school-age children; or
6. A related degree approved by the Early Childhood Development Authority; and
12. Provide documentation demonstrating that standardized personnel evaluations are conducted annually.

Section 5. Level 3 Quality Rating Certificate [three- (3)] Requirements. A licensed child care center participating in STARS and holding the program-ea a Level 3 quality rating certificate [three-(3)-center] shall:

1. Post prominently in each classroom and maintain the following staff-to-child ratios and group size:
   
<table>
<thead>
<tr>
<th>Age</th>
<th>Ratio</th>
<th>Group Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth - 1 year</td>
<td>1 staff for 4 children</td>
<td>8</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>1 staff for 5 children</td>
<td>10</td>
</tr>
<tr>
<td>2 to 3 years</td>
<td>1 staff for 8 children</td>
<td>16</td>
</tr>
<tr>
<td>3 to 4 years</td>
<td>1 staff for 11 children</td>
<td>22</td>
</tr>
<tr>
<td>4 to 6 years</td>
<td>1 staff for 12 children</td>
<td>24</td>
</tr>
<tr>
<td>6 to 12 years</td>
<td>1 staff for 14 children</td>
<td>28</td>
</tr>
</tbody>
</table>

2. Meet the requirements of Sections 2(3) and 3(2)(a)2 and 3, (b), (c), and (d) through (f)(6) [(i) to (9), (6), and (7) to (11)] of this administrative regulation;
3. Coordinate at least three (3) annual activities involving parental or family participation;
4. Document a procedure for use of parental or family feedback;
5. Achieve an overall average score of at least four point five (4.5) on the environment rating scales (scale in the fourth year of certification at program-ea] a Level 3 quality rating [three (3)-center];
6. Review and sign the "DCC-403, STARS for KIDS NOW: Level 3 Standards Checklists" during the STARS rating visit;
7. Meet the requirements of Section 4(2), (4), (9), (10), (11)(b), (c), (d), (e), and (12) of this administrative regulation; and
8. (a)(7) Ensure that at least fifty (50) percent of staff, including substitutes, who have direct supervisory authority over a child have:
   1. [61] Completed the Commonwealth Child Care Credential; or
   2. Obtained a higher level of education as described in Section 4(10)(c), (d), or (e) of this administrative regulation; or
   (b) Before July 1, 2004, completed nine (9)-clock hours of state agency-approved child development training—beyond the twelve (12) hour requirement specified in 922 KAR 2:110;
9. Ensure that at least fifty (50) percent of staff who have [have] [have] direct supervisory authority over a child are [are] [are] certified in infant and child:
   (a) [Child] Cardiopulmonary resuscitation; and [infant-and]
   (b) [Child] First aid; or
10. Ensure that the center's director, or the person responsible for the on-site [center-on-site] operation of the center, receives twelve (12) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;
11. Ensure that one (1) of the following is present in the center at least seventy-five (75) percent of the center's daily hours of operation:
   (a) The center's director;
   (b) A person responsible for the center's operation;
   (c) An employee qualified as a child development associate; or
   (d) An employee with a higher level of education, as described in Section 4(10)(c) or [and] (e) of this administrative regulation;
12. Provide at least six (6) days paid leave per year to each employee who:
   (a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and
   (b) Has been employed in the center less than one (1) year;
13. Provide paid leave in an amount prorated according to the
standard established [set-forth] in subsection (11) of this section for each employee who:

(a) Works less than thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center less than one (1) year;

(13) Provide at least eleven (11) days paid leave per year to each employee who:

(a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center for at least one (1) year; and

(15) If year-round child care services are not offered, provide paid leave in an amount prorated according to the standard established [set-forth] in subsections (11) through (13), (19), and (14) of this section.

Section 6. Level 4 Quality Rating Certificate [Four-(4)] Requirements. A licensed child care center participating in STARS and holding [the program as- a Level 4 quality rating certificate [four(4)-center] shall:

1. Post prominently in each classroom and maintain the staff-to-child ratios and group size recommended [required] by the National Association for the Education of Young Children, [which are]:

<table>
<thead>
<tr>
<th>Age</th>
<th>Staff-to-Child Ratio</th>
<th>Group Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-12 months</td>
<td>1-staff for 3-children 6</td>
<td></td>
</tr>
<tr>
<td>12-23 months</td>
<td>1-staff for 3-children 9</td>
<td></td>
</tr>
<tr>
<td>24-30 months</td>
<td>1-staff for 4-children 12</td>
<td></td>
</tr>
<tr>
<td>30-36 months</td>
<td>1-staff for 5-children 15</td>
<td></td>
</tr>
<tr>
<td>3-years-old</td>
<td>1-staff for 7-children 21</td>
<td></td>
</tr>
<tr>
<td>4-years-old</td>
<td>1-staff for 8-children 21</td>
<td></td>
</tr>
</tbody>
</table>

2. Meet the requirements of Sections 2(3), 3(2)(a)(2) and 3(3)(b), (c) and (f) through (h) and 5(6)(ii) (1) to (3), (6), and (7) to (11) of this administrative regulation;

3. Coordinate at least four (4) annual activities involving parent or family participation;

4. Meet the requirements of Section 4(2), (4), (9), (10), (11)(b), (c), (d), (e), and (12) of this administrative regulation;

5. Meet the requirements of Section 5(4), (7), (8), and (10) through (15) of this administrative regulation;

6. Achieve an overall average score of at least six (6) on the environment rating scales portion of the STARS rating visits (scale);

7. Review and sign the "DCC-404, STARS for KIDS NOW Level 4 Standards Checklist" during the STARS rating visit;

8. Be accredited by:

(a) The National Association for the Education of Young Children (NAEYC);

(b) The National Early Childhood Program Accreditation (NECAP);

(c) The National After School Association (NAA) (School-Age Care Alliance (NSCAA));

(d) The Southern Association of Colleges and Schools (SACS); or

(e) An organization approved by the Early Childhood Development Authority;

(9) (8) Ensure that at least one (1) employee who has a Child Development Associate's Credential or higher level of education, as described in Section 4(10)(d) or (8) (e) of this administrative regulation, is present in each classroom during hours of operation;

(10) (9) Ensure that the center's director or employee who is designated responsible for the center's on-site operation as required by 822 KAR 2:110:

(a) Meets the standards recommended by the organization by which the center is accredited;

(b) Receives twelve (12) clock hours of early care and education [annual child development training annually beyond the twelve (12) hour requirement specified in 822 KAR 2:110; and

(c) [After July 1, 2004] Has completed the Director's Credential or an equivalent credential approved by the Early Childhood Development Authority;

(11) (10) Ensure that health insurance is available to each employee of the center;

(12) (9) Pay at least fifty (50) percent of the cost of the single health insurance plan for each employee who works at least thirty-seven and one-half (37.5) hours per week in the center; and

(13) (12) Pay the cost of a single health insurance plan in an amount no less than a percentage prorated according to the standard set forth in subsection (12) [44] of this section, for each employee who works less than thirty-seven and one-half (37.5) hours per week in the center.

Section 7. STARS for KIDS NOW [86] Achievement and Quality Incentive Awards. [44] To the extent that funds are available, a one (1) time participation award of $500 shall be provided, to the extent that funds are available, to the provider who enters the program as a Level one (1) participant.

(2) (1) the cabinet shall pay achievement and quality incentive awards.

(1) Achievement award

(a) A one (1) time STARS [star] achievement award shall be awarded to a Type I center that achieves a STARS rating, [to the extent that funds are available], according to the following chart:

<table>
<thead>
<tr>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant's enrollment is 50 or less (new)</td>
<td>$200</td>
<td>$500</td>
<td>$1,700</td>
</tr>
<tr>
<td>Participant's enrollment is 51 to 100 children</td>
<td>$200</td>
<td>$750</td>
<td>$2,200</td>
</tr>
<tr>
<td>Participant's enrollment is more than 100 children</td>
<td>$200</td>
<td>$1,000</td>
<td>$2,700</td>
</tr>
</tbody>
</table>

(b) A Type I center that achieves a STARS level greater than a Level 1 shall receive an achievement award for each STARS level up to and including all STARS level ratings achieved at that time.

(c) An achievement award shall not be awarded more than one (1) time per STARS level achieved.

(2) Quality incentive award.

(a) A Level 1 STARS rated Type I center shall not be eligible to receive a quality incentive award.

(b) Quality incentive awards shall be calculated and paid on the percentage of children served by the Child Care Assistance Program, as described in 822 KAR 2:150, to the qualified center.

(c) A quality incentive award shall be calculated and paid based on the center's STARS rating level and the percentage of CCAP subsidized children, compared to the total number of children served during the month the quality rating certificate was issued. The product of this equation shall be the monthly amount of the quality incentive award.

(d) The following chart shall be used when calculating the amount of a quality incentive award:

<table>
<thead>
<tr>
<th>Level of Participant's enrollment</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10%</td>
<td>$8</td>
<td>$11</td>
<td>$14</td>
<td>$17</td>
</tr>
<tr>
<td>11-20%</td>
<td>$12</td>
<td>$18</td>
<td>$24</td>
<td>$30</td>
</tr>
<tr>
<td>21-30%</td>
<td>$20</td>
<td>$30</td>
<td>$40</td>
<td>$50</td>
</tr>
<tr>
<td>31-40%</td>
<td>$30</td>
<td>$45</td>
<td>$60</td>
<td>$75</td>
</tr>
<tr>
<td>41-50%</td>
<td>$50</td>
<td>$75</td>
<td>$100</td>
<td>$125</td>
</tr>
<tr>
<td>51-60%</td>
<td>$75</td>
<td>$125</td>
<td>$175</td>
<td>$225</td>
</tr>
<tr>
<td>61-70%</td>
<td>$125</td>
<td>$225</td>
<td>$325</td>
<td>$425</td>
</tr>
<tr>
<td>71-80%</td>
<td>$225</td>
<td>$425</td>
<td>$625</td>
<td>$825</td>
</tr>
<tr>
<td>81-90%</td>
<td>$425</td>
<td>$825</td>
<td>$1,312</td>
<td>$1,812</td>
</tr>
<tr>
<td>91-100%</td>
<td>$825</td>
<td>$1,812</td>
<td>$3,125</td>
<td>$4,812</td>
</tr>
</tbody>
</table>
A Quality incentive award shall be paid to a qualified center at least annually, and the quality incentive award shall be recalculated annually to the center.

(2) If a child care center's initial quality rating certificate [rating level [6]-[9] higher than [Level 2 or higher] [two-(2)], the center shall receive a STARS [star] achievement award.

(3) [To the extent that funds are available.]

<table>
<thead>
<tr>
<th>Amount per month for each child served by:</th>
<th>Amount per month for each child served by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is under age three (2)</td>
<td>Who is under age three (3) and over</td>
</tr>
<tr>
<td>Level 2</td>
<td>Level 3</td>
</tr>
<tr>
<td>$8</td>
<td>$12</td>
</tr>
<tr>
<td>$9</td>
<td>$13</td>
</tr>
<tr>
<td>$10</td>
<td>$14</td>
</tr>
</tbody>
</table>

(4) [A quality incentive award shall be:]

(a) Awarded to the extent that funds are available, and
(b) Calculated and paid as follows:

1. A participating center's quality rating certificate level and the percentage of enrolled children served by the CCAP [Child Care Assistance Program] [shall be used to determine, according to the chart in subsection (2)] (1) [of this section], the amount that shall be multiplied by the number of enrolled children who were served by the CCAP [Child Care Assistance Program] during the month in which the quality rating certificate was issued. The product of this equation shall be the monthly amount of the quality incentive award [multiplied by twelve (12) and divided by four (4)],

2. A quality incentive award shall be paid [quarterly] [to a qualifying participant that has received a quality rating certificate by the first day of the payment period][quarterly].

(2) [The percentage of children who are enrolled at a participating center and served by the CCAP [Child Care Assistance Program] shall be reviewed at the end of six (6) months. If the percentage of children served by the CCAP [Child Care Assistance Program]

(a) Decreases, a quality incentive award shall be lowered according to the percentage of [sub] children served by the CCAP at the time of the six (6) month review,

(b) [If the percentage of children who are enrolled at a participating center and served by the Child Care Assistance Program] Increases, the quality incentive award shall be increased according to the percentage of children served by the CCAP at the time of the six (6) month review (accordingly upon issuance of a renewed quality rating certificate).

Section 8. Renewal of a Quality Rating Certificate (1) The cabinet or its designee shall notify a participating center [participant] at least ninety (90) calendar days before expiration of the center's [participant's] rating certificate.

(2) A center [participant] shall submit a DCC-405 [written request] to the cabinet or its designee for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) A quality rating certificate shall be renewed by a quality rating visit every:

(a) Year for a Level 1 rated center;

(b) Two (2) years for a Level 2 rated center;

(c) Three (3) years for a Level 3 rated centers; and

(d) Four (4) years for a Level 4 rated center. If the cabinet determines that a participating center does not meet the rating level standards for which the center is recognized, a center shall:

(1) Accept a lower rating level;

(2) Submit a written request to the cabinet, within ten (10) calendar days from receipt of a reduced quality rating certificate, for an informal dispute resolution meeting. The request shall be accompanied by a request for an administrative hearing pursuant to KRS Chapter 13B. If an appellant is satisfied with the outcome of the informal dispute resolution process, the administrative hearing shall be canceled. Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a demoted rating level.

Section 9. Conditions Requiring Reevaluation. Reevaluation of a center's quality [participant's] rating certificate and associated level shall be conducted if the:

(2) Location of a licensed child care center changes;

(2) If the participant requests a reevaluation in accordance with Section 9 of this administrative regulation; or

(3) Cabinet or its designee determines a need to reassess the participating center's STARS participation or level rating due to reports or findings concerning a reduction in the center's quality of care and services [Within ninety (90) days of transfer of ownership, if a center continues participation under a provisional quality rating certificate].

Section 10. Conditions Requiring Revocation. (1) A participant's quality rating certificate shall be revoked for:
(a) Immediate closure pursuant to KRS 138.125 and 199.896(4):
(b) Denial of relicensure;
(c) A pending suspension or revocation action taken against the child care center's license;
(1) Failure to comply with payment of a civil penalty levied against the center; or
(2) Failure to make payment arrangements for a civil penalty within sixty (60) days and comply with that arrangement; if
(3) The center waived the right to appeal the civil penalty; or
(4) The civil penalty has been upheld on appeal.
(e) Failure to comply with the requirements of 922 KAR 2:160;
(f) Two or more civil penalties levied against the center in a twelve (12) month period; or
(g) A change in ownership.

(2) Payment of a quality incentive award shall cease upon revocation of a quality rating certificate.

Section 11. Quality Rating Certificate. A quality rating certificate shall be returned to the cabinet if:
(1) The certificate is revoked.
(2) The certificate is not renewed; or
(3) The center voluntarily withdraws from the STARS Program.

Section 12. Appeals. (1) If the cabinet or its designee determines that a participant does not meet the rating level standards for which the center is certified, a center shall:
(a) Accept a lower rating level; or
(b) Request an administrative hearing in accordance with 922 KAR 1:320, Section 2(11) [410].
(2) Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a reduced rating level.
(3) If a participant appeals revocation of a quality rating certificate for a negative action described in Section 1(4)(a) through (e) of this administrative regulation, the quality rating appeal shall be combined with appeal of the negative action.
(4) If denial, suspension, or revocation of a child care center's license is reversed upon appeal, the:
(a) Center may reapply for participation in the STARS Program; or
(b) Cabinet may restate the center at the STARS level the center was rated prior to the licensure issue if the:
1. Center submits a request for reinstatement; and
2. Center's STARS quality rating certificate and licensure has not expired.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DCC-400, Level 1 Rating Certificate Application," edition 9006 [37(06)];
(b) "DCC-401, STARS for Kids NOW-Level 1 Standards Checklist," edition 9006 [37(06)];
(c) "DCC-402, STARS for Kids NOW-Level 2 Standards Checklist," edition 9006 [37(06)];
(d) "DCC-403, STARS for Kids NOW-Level 3 Standards Checklist," edition 9006 [37(06)];
(e) "DCC-404, STARS for Kids NOW-Level 4 Standards Checklist," edition 9006 [37(06)];
(f) "DCC-405, STARS for Kids NOW-Rating Visit Request Form," edition 9006 [37(06)];
(1) Application for Level One (1) Rating Certificate, edition July 2001; and
(2) "STAR Rating Request Form, edition July 2001".
(2) [211] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (85-7 Ky.-R. 3482, Am.-25 Ky.-R. 400, eff. 1-1-01; 27-46 Ky.-R. 733, eff. 8-21-01).
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499-924(6), or
(b) Licensed in accordance with KRS 199.896 and 622 KAR 2:000, 622 KAR 2:110, and 622 KAR 2:120, to operate a child-care center, as defined at 199.894(3), in a home or dwelling unit that is the full-time residence of the licensee.
(1) "Family Day Care Rating Scale" or "FDQRS"—means a rating scale conducted in a provider's home to assess quality of the environment and services provided.
(2) "Parental or family participation" means involvement of a parent or custodian in a Type II center or family child care home's [child-care provider's] attempt to provide information or include the parent or custodian in the center or home's [provider's] activities, such as:
(a) Distribution of a newsletter;
(b) Distribution of a program calendar;
(c) A conference between the center or home [provider] and a parent or custodian; or
(d) Other activity designed to engage a parent or custodian in the program's activities.

7 [6] (5) [Program’s] or "STARS for Kids NOW Program" or "STARS" means the voluntary quality-based graduated child-care rating system established by KRS 199.894(1).
(6) "Type II Center" means a child care center licensed by the cabinet or its designee in accordance with 922 KAR 2:090, 2:110, and 2:120 and that provides care:
(a) In a home or dwelling unit that is the full-time residence of the home provider;
(b) For at least seven (7), but not more than twelve (12) children;
(c) Provisional quality rating certificate—means a six (6) month probationary certificate issued to a new participant in the program immediately upon change of ownership of a child-care center;
(d) "Referral agency" means a cabinet-designated entity described at KRS 199.899(1).
(e) "State agency" means the:
(a) Cabinet for Health and Family Services;
(b) Cabinet for Family and Community Services;
Section 2. Application. (1) A Type II center or a certified family child care home may:
(a) Apply to participate in the STARS program after six (6) months from the date of initial licensure or certification; and
(b) Achieve a quality rating certificate of Level 1 through Level 4.
(2) If an applicant seeks participation in STARS as a Level 1 [H] quality rating certificate [provider]:
(a) The applicant shall complete:
1. DCC-400, Level 1 Rating Certificate Application; and
2. DCC-401, STARS for Kids NOW-Level 1 Standards Check List.
(b) The cabinet or its designee [A resource and referral agency staff person] shall verify on the DCC-401, Level One (1) Standards—incorporated by reference, the applicant’s [provider's] documented compliance with the Level 1 [one] requirements described in Section 3 of this administrative regulation.
(3) If an applicant seeks a Level 2, 3, or 4 quality rating certificate:
(a) Applicant shall complete a "DCC-405, STARS for KIDS NOW Rating Visit Request Form"; and
(b) Cabinet or its designee:
1. Shall contact the applicant within fifteen (15) working days to schedule a STARS rating visit, upon receipt of a completed DCC-405;
2. And the applicant shall agree to a two (2) week time period for the STARS rating visit to occur, and
3. Shall issue to an approved applicant, within sixty (60) calendar days from the date of the STARS rating visit, a quality rating certificate that shall:
   a. Be valid for a period specified in Section 6(5) of this administrative regulation; and
   b. Specify the rating level approved for the Type II center or family child care home [child-care provider].
(4) For the purpose of determining the center's or home's rating, [6] An applicant seeking participation as a Level two (2), three (3), or four (4) provider shall obtain a "STARS Rating Visit Request Form", incorporated by reference, from a resource and referral agency.
(a) An individual certified to operate a family child-care home shall submit the completed form to the cabinet.
(b) An individual licensed to operate a Type II child-care home shall submit the completed form to the cabinet.
(c) Upon receipt of a properly completed "STARS Rating Visit Request Form" the state agency shall:
   (a) Schedule a prearranged rating visit [within sixty (60) calendar days];
   (b) Complete an FDQRS during the initial and each subsequent rating visit; and
   (c) Issue to the applicant, within sixty (60) calendar days from the date of the rating visit, a quality rating certificate that shall:
1. Be valid for the period of one (1) year; and
2. Specify the rating level—representing a provider's compliance with the requirements of that level.

4(1) A participant in the STARS Program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit [for the purpose of redetermining the provider's rating].
(5) A Type II center or family child care home [child-care provider] applying or participating in the STARS program shall:
(a) Not have an immediate closure, denial of relicensure or recertification, suspension, or revocation action against the center's [child-care provider's] license or home's certificate; and
(b) Pay any civil penalty levied against the center or home [child-care provider] [H] as a result of the provider's failure to comply with the Level 1 [one] requirements described in Section 3 of this administrative regulation.

Section 3. Level I Quality Rating Certificate [One-1] Requirements. (1) A Type II center or family child care home:
(a) Shall not be allowed to hold a Level 1 quality rating certificate for more than [three] three (3) years; and
(b) May apply for participation six (6) months after expiration of the Level 1 [one] quality rating certificate.
(2) A Type II center or family child care home participating in STARS and holding a Level 1 quality rating certificate [Level-one (1) participant] shall:
(a) Post prominently in the home, and maintain compliance with the:
1. Capacity requirements established in 922 KAR 2:100, Section 10, if the STARS participant is a certified family child care [child-care] home [provider]; and
2. Following staff to child ratios if the participant is a licensed Type II center [provider]:

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth to 1 year</td>
<td>1:5</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>1:6</td>
</tr>
<tr>
<td>2 to 3 years</td>
<td>1:10</td>
</tr>
<tr>
<td>3 and older</td>
<td>1:12</td>
</tr>
</tbody>
</table>
(b) If the participant is a:
1. Certified family child care [child-care] home [provider], comply with the requirements set forth in 922 KAR 2:100; or
2. Licensed Type II center [provider], comply with the requirements established in:
   a. 922 KAR 2:050, Child Care Center Licensure;
   b. 922 KAR 2:110, Child Care Facility Provider Requirements; and
   c. 922 KAR 2:120, Child Care Facility Health and Safety Standards;
(c) Attend an overview of STARS [the program] prior to program participation; and
(d) Agree to an [a-curriculum] assessment in which the environment rating scale [FDQRS] shall be used under the following conditions:
1. The environment rating scale [FDQRS] shall be conducted by the Type II center or family child care home [child-care pro-
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violation] with assistance, if requested, from the cabinet or its designee [a resource and referral agency staff person] within the first twelve (12) months of participation in the program.

2. The Type II center or family child care home (child-care provider) shall not be required to achieve [Participation as a level one (1)-provider shall not require achievement of a specific score on the environment rating scale [FDCRS]]; and

3. Upon completion of the environment rating scale [FDCRS] during the second year of certification at [participation as] a Level 1 quality rating [one (1)-provider], the Type II center or family child care home (child-care provider) shall develop a written plan, with assistance from the cabinet or its designee, if requested [and referral agency staff person], for improved performance in each area identified by the environment rating scale [FDCRS] as needing improvement.

(e) Post in a prominent area, the Type II center or family child care home’s [child-care provider’s]:

1. Planned program of activities; and
2. Daily schedule;
3. Coordinate at least one (1) annual activity involving parental or family participation;

(g) Maintain a written child care agreement with each child’s parent or custodian, including the name of each person designated by the parent to pick up the child;

(h) Maintain a written description of services that includes:

1. Current rates for child care;
2. Hours of operation;
3. A plan for daily communication with each child’s parent or custodian; and

4. Policy regarding:

a. Late fees;

b. Holidays;

c. Vacation;

d. Illness; and

(e) How an arrangement shall be made for an individual, other than one (1) previously designated by the parent, to pick up a child;

(1) [Not have an immediate closure, denial of relicensure or relicense, or pending suspension or revocation action against the provider’s certificate or license to operate;]

(2) [In the case of a Type II child-care home, Pay any civil penalty levied against the child-care provider if the:

1. Child-care provider has waived the right to appeal a civil penalty; or

2. Civil penalty has been upheld on appeal;]

(k) Comply with 922 KAR 2:160, Child Care Assistance Program [CCAP]; and

(l) In the case of a:

1. Certified family child care (child-care home) provider, develop and implement a written plan for obtaining annual training required by KRS 199.8982(2); or

2. Licensed Type II center [provider], develop and implement a written annual plan for obtaining training for each employee, including the licensees.

Section 4. Level 2 Quality Rating Certificate [Two (2)] Requirements. A Type II center or family child care home participating in STARS and holding a Level 2 quality rating certificate [Level two (2)-participant] shall:

1. Meet the requirements of Sections 2(3) and 3(2)(a) through (e), (c), (d), and (g) through (f) of this administrative regulation;

2. Coordinate at least two (2) annual activities that involve parental or family participation;

3. Provide documentation of a written plan for parental or family involvement;

4. Achieve an average score of at least three (3) on the environment rating scale portion of the STARS rating visit [FDCRS];

5. If the Type II center or family child care home (child-care provider) achieves an average score of three (3) on the environment rating scale portion of the STARS rating visit [FDCRS], develop a written plan, with assistance from the cabinet or its designee [a resource and referral agency staff person], for improved performance on subsequent environment rating scale [sealed];

6. Achieve an average score of at least four (4) on the environment rating scale portion of the STARS rating visit [FDCRS] by the fourth year of certification at [participation as] a Level 2 quality rating [two (2)-participant];

7. Achieve a Level 2 quality rating [two (2)-participant] by the fourth year of certification at [participation as] a Level 2 quality rating [two (2)-participant];

8. Achieve an overall average score of four (4) on the environment rating scale portion of the STARS rating visit [FDCRS] for each year beyond the fourth year of certification at [participation as] a Level 2 quality rating [two (2)-participant];

9. Review and sign the "DCC-402 STARS for Kids NOW - Level 2 Standards Checklist" during the STARS rating visit;

10. [Reject the child daily if:

(a) [Cardiac pulmonary resuscitation; and

(b) [Child First Aid];]

11. [Meet the training requirement as follows:

(a) If the STARS participant is a:

1. Certified family child care (child-care home) [provider], complete three (3) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually, beyond the six (6) hour requirement specified in 922 KAR 2:110;

2. Type II center [child-care home], the licensee and each staff person shall complete three (3) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(b) Obtain a Community Child Care Credential;

(c) Have a Child Development Associate’s Credential;

(d) [After July 1, 2004] Complete the [family child-care] Director’s Credential or an equivalent credential approved by the Early Childhood Development Authority;

(e) Have a Montessori Certification;

(f) Have an associate or higher level of education in:

1. Interdisciplinary early childhood education;

2. Early childhood special education;

3. Early childhood education;

4. Early care and education [childhood development];

5. Elementary education for teaching kindergarten through fourth grade, if the center or home [provider] cares for school-age children; or

6. A related degree approved by the Early Childhood Development Authority;

12. [In the case of a Type II center [child-care home], comply with the provisions of:

(a) 11 KAR 16.040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16.050, Early Childhood Development Scholarship Program system of monitoring and accountability;]

13. [Provide proof that a recordkeeping system is maintained, including:

(a) Documentation of child care business expenses; and

(b) Income from the business.

Section 5. Level 3 Quality Rating Certificate [Three (3)] Requirements. A Type II center or family child care home participating in STARS and holding a Level 3 quality rating certificate [Level three (3)-participant] shall:

1. In the case of a:

(a) Certified family child care home [provider], have an assistant if the center [provider] cares for at least six (6) children and more than three (3) are infants or children [age]:

1. Fewer children and more than [Three (3)] children are infants; or

2. More children and more than [Three (3)] children are under the age of twenty-four (24) months;

(b) Type II center [child-care home], meet the following staff-to-child ratios:

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth - 1 year</td>
<td>1:4</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>1:5</td>
</tr>
<tr>
<td>2 to 3 years</td>
<td>1:8</td>
</tr>
<tr>
<td>3 and older</td>
<td>1:12</td>
</tr>
</tbody>
</table>

(2) Meet the requirements of Sections 2(3) and 3(2)(b) (e).
through (h), (i), and (k) through (l), (m), (n), and (o) of this administrative regulation;
(3) Coordinate at least three (3) annual activities involving parental or family participation;
(4) Achieve an average score of at least 4.5 on the environment rating scale portion of the STARS rating visit [FDGRS];
(5) Achieve a score of at least five (5) [re: not applicable] on the environment rating scale portion of the STARS rating visit [FDGRS] pertaining to the use of television;
(6) Review and sign the "DCC-404, STARS for KIDS NOW: Level 4 Standards Checklist" during the STARS rating visit;
(7) Meet the requirements of Section (4)(f), (g), (j), (1), and (10); and (12) (13) and (14) of this administrative regulation;
(g) [F] Provide each parent or custodian with a:
(a) Written daily report for each child under two (2) years of age; and
(b) Handbook containing a description of the center or home's [provider's] policies;
(h) [J] Meet the training requirement as follows:
(a) A certified family child care [child-care] home [provider] shall:
1. Complete eighteen (18) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually; or
b. [r] Obtain a higher level of education as specified in Section 4(11)(b) through (f) of this administrative regulation; and
2. By the fourth year of participation in the STARS Program, have obtained a Child Development Associate's Credential or higher level of education as specified in Section 4(11) (11)(d) through (f) of this administrative regulation; and
(b) A Type II center [child-care home] licensed shall:
1. Ensure that each staff person:
   a. Completes eighteen (18) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually; or
   b. Has a higher level of education described in Section 4(11)(b) through (f) of this administrative regulation; and
2. Ensure that the director:
   a. Completes twenty-one (21) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually; or
   b. Has a higher level of education as specified in Section 4(11)(b) through (f) of this administrative regulation; and
3. By the fourth year of participation in the STARS Program, have obtained a Child Development Associate's Credential or higher level of education as specified in Section 4(11)(d) through (f) of this administrative regulation; and
  (10)(f) Ensure that each assistant has:
(a) Attended basic orientation training; and
(b) Obtained three (3) hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually.

Section 6. Level 4 Quality Rating Certificate [Four- (4)- ] Requirements. A Type II center or family child care home participating in STARS and holding a Level 4 quality rating certificate [Level-four (4)-participant] shall:
(1) Not exceed nine (9) children if in-the-charge-of a certified family child care [child-care] home [provider], have a maximum capacity not to exceed nine (9) children;
(2) Meet the requirements of Section 3(2)(a) through (l) (c), (e), and (g) through (i) of this administrative regulation;
(3) Coordinate at least four (4) annual activities involving parental or family participation;
(4) Meet the requirements of Sections 2(2), (4), (5), (11), and (12), and 5(5) of the administrative regulation;
(5) Meet the requirements of Section 5(1), (5), (6), and (10) (7), and (9) of this administrative regulation;
(6) Achieve an average score of at least 5.5 on the environment rating scale portion of the STARS rating visit [FDGRS];
(7) Review and sign the "DCC-404, STARS for KIDS NOW: Level 4 Standards Checklist";
(8) Be accredited by:
(a) The National Association for Family Child Care; or
(b) An organization approved by the Early Childhood Development Authority.
(9) [G] Show proof of membership in an early childhood professional organization that has national, multi-state, regional, or statewide affiliation; and
(10) [J] Meet the following relevant training requirement:
(a) A Type II center or family child care home [child-care provider] shall:
1. Have a higher level of education as specified in Section 4(11)(d) through (f) of this administrative regulation;
   (b) By July 1, 2004, complete the [child-care home] Director's Credential or an equivalent credential approved by the Early Childhood Development Authority; and
(b) Each staff person employed by a Type II center [child-care provider] shall:
1. Complete twenty-one (21) clock hours of early care and education [state agency-approved child development] training approved by the cabinet or its designee annually;
2. Have a higher level of education as specified in Section 4(11)(d) through (f) of this administrative regulation;
Section 7. STARS [Star] Achievement and Quality Incentive Awards. [F] To the extent that funds are available, a one (1) time participation award of $300 shall be provided, to the extent that funds are available, to a provider who enters the program as a Level-one (1) participant;
(g) The cabinet shall pay achievement and quality incentive awards.
(1) Achievement award.
(a) A one (1) time STARS [star] achievement award shall be awarded to a provider who enters the program as a Level-one (1) center or family child care home that achieves a STARS rating, according to the following chart:

<table>
<thead>
<tr>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100</td>
<td>$250</td>
<td>$500</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
(b) A Type II center or family child care home that achieves a STARS level greater than a Level 1 shall receive an achievement award for each STARS level up to and including the approved STARS level.
(c) An achievement award shall not be awarded more than one (1) time per STARS level achieved.
(2) Quality Incentive award.
(a) A Level 1 STARS rated Type II center or family child care home shall not be eligible to receive a quality incentive award.
(b) A quality incentive award shall be calculated and paid for each child served by the Child Care Assistance Program as described in KAR 2-160.5
(c) If a Type II center or family child care home's [provider] has an initial quality rating certificate [level re: a level or higher] higher than Level Two (2) [the provider shall receive a STARS [star] achievement award;]
(d) [J To the extent that funds are available and to the extent that funds are available;]
(e) [Beginning at Level-1 (two (2))], up to the provider's rating level;
(f) A provider shall not receive an award for a level more than one (1) time;
(g) [4] A quality incentive award shall not be available to a Type II center or family child care home holding a Level 1 quality rating certificate [Level-one (1) participant];
(h) [J] The following chart shall be used when calculating the amount of a quality incentive award:
<table>
<thead>
<tr>
<th>STARS Level</th>
<th>Amount per month per child</th>
<th>Amount per month per child</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Star]</td>
<td>[for each child served by the GCAP [Child Care Assistance Program] [who is] under age three (3)]</td>
<td>[for each child served by the GCAP [Child Care Assistance Program] [who is] age three (3) and over]</td>
</tr>
<tr>
<td>Level 2</td>
<td>$10</td>
<td>$9</td>
</tr>
<tr>
<td>Level 3</td>
<td>$13</td>
<td>$12</td>
</tr>
<tr>
<td>Level 4</td>
<td>$16</td>
<td>$14</td>
</tr>
</tbody>
</table>

(d) A quality incentive award shall be paid to a qualified STARS participant at least annually.

Section 8. Renewal of a Quality Rating Certificate. (1) The cabinet or its designee [state agency] shall notify a participating Type II center or family child care home [participant] at least ninety (90) calendar days before expiration of the center or home’s [participant’s] quality rating certificate.

(2) A participating Type II center or family child care home [participant] shall submit a DCC-405 written request to the cabinet or its designee [state agency] for a quality rating vest at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) A quality rating certificate shall be renewed by a quality rating visit:

(a) Annually for a Level 1 rated Type II center or home;

(b) Every two (2) years for a Level 2 rated Type II center or home;

(c) Every three (3) years for a Level 3 rated Type II center or home; and

(d) Every four (4) years for a Level 4 rated Type II center or home.

The state agency determines that a participant does not meet the rating level standards for which the center is recognized, a provider shall:

(a) Accept a lower rating level; or

(b) Submit a written request to the state agency, within ten (10) calendar days from receipt of a reduced quality rating certificate, for an informal dispute resolution meeting.

4. The request shall be accompanied by a request for an administrative hearing pursuant to KRS Chapter 13B.

2. If an applicant is satisfied with the outcome of the informal dispute resolution process, the administrative hearing shall be cancelled.

3. Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a demoted rating level.

Section 9. Conditions Requiring Reevaluation. Reevaluation of a participating Type II center or family child care home’s [participant’s] rating certificate and associated level shall be conducted if the:

(1) Location of the center or home [a-family-child-care] [provider] changes; or

(2) Center or home [Participant] requests a reevaluation in accordance with Section 2(4) of this administrative regulation; or

(3) Cabinet or its designee determines a need to reassess the center or home’s STARS participation or quality rating certificate level due to reports or findings related to a reduction in the center or home’s quality of care or services.

Section 10. Conditions Requiring Revocation. (1) A Type II center or family child care home’s [participant’s] quality rating certificate shall be revoked for:

(a) Closure pursuant to KRS 13B.125, 199.885(4) and 199.889(1)(b);

(b) Denial of recertification or relicensure;

(c) A pending suspension or revocation action taken against the center or home’s [provider’s] certificate or license to operate;

(d) Failure to comply with the requirements of 922 KAR 2.160; or

(e) [in the case of a Type II child care family, the failure to;]

1. Comply with payment of a civil penalty levied against the center or home if:

a. The center or home waived the right to appeal the civil penalty;

b. The civil penalty has been upheld on appeal; or

2. Make payment arrangements for a civil penalty within sixty (60) days and comply with that arrangement if:

a. [The center or home waived the right to appeal the civil penalty;

b. [The civil penalty has been upheld on appeal; or

[The provider waived the right to appeal the civil penalty; or

3. The civil penalty has been upheld on appeal;]

f. Two (2) or more civil penalties levied against the center or home in the previous twelve (12) months, in accordance with KRS 199.990; or

(g) A change in ownership.

(2) Payment of a quality incentive award shall cease upon revocation of a quality rating certificate.

Section 11. Quality Rating Certificate. A quality rating certificate shall be returned to the cabinet or its designee [state agency] if:

(1) The certificate is revoked;

(2) The certificate is not renewed; or

(3) The center or home [provider] voluntarily withdraws from the STARS [program].

Section 12. Appeals. (1) If the cabinet or its designee determines that a participating Type II center or family child care home does not meet the rating level standards for which it is certified, the center or home shall:

(a) Accept a lower rating level; or

(b) Request an administrative hearing in accordance with 922 KAR 13B, Section 2(11) [441].

(2) Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a reduced quality rating certificate level.

(3) [If a participant appeals revocation of a quality rating certificate for a negative action described in Section 12(1)(a) through (c) of this administrative regulation, the quality rating appeal shall be conducted with appeal of the negative action.

(3) If denial, suspension, or revocation of a Type II center or family child care home’s [provider’s] certificate or license to operate is reversed upon appeal, the;

(a) Center or home may reapply for participation in the STARS;

(b) Cabinet may reinstate a center or home’s STARS quality rating certificate and associated level if the;

1. Center or home submits a request for reinstatement; and

2. Center’s or home’s STARS quality rating certificate and licensure has not expired [program].

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-400, Level 1 Rating Certificate Application", edition 9/06 [07/06];

(b) "DCC-401, STARS for KIDS NOW-Level 1 Standards Checklist", edition 9/06 [07/06];

(c) "DCC-402, STARS for KIDS NOW-Level 2 Standards Checklist", edition 9/06 [07/06];

(d) "DCC-403, STARS for KIDS NOW-Level 3 Standards Checklist", edition 9/06 [07/06];

(e) "DCC-404, STARS for KIDS NOW-Level 4 Standards Checklist", edition 9/06 [07/06]; and

(f) "DCC-405, STARS for KIDS NOW-Rating Visit Request Form", edition 07/06. [Application for Level One (1) Rating Certificate Certified Family Child Care Home, edition July 2002; application for Level One (1) Rating Certificate Licensed Type II Family Child Care Home, edition July 2002; Level One (1) Standards, edition July 2002; "STAR Rating Visit Request Form for Certified Family Child Care Home, edition July 2002; and "STAR Rating Visit Request Form for Licensed Type II Fam-
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amended After Comments)

103 KAR 16:352. Corporation income taxes policies and circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws. The purpose of this regulation is to rescind corporation income taxes policies and circulars.

Section 1. The following corporation income taxes policies and circulars of the Department of Revenue are rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 41P010 - Cooperatives. This policy is being rescinded because it conflicts with KRS 141.160 and 141.170.
(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership - This policy is being rescinded because it restates KRS 141.140(1).
(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy is being rescinded because it restates KRS 141.210(2).
(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy is being rescinded because it restates KRS 141.990(3).
(5) Revenue Policy 41P070 - Income and deductions. This policy is being rescinded because it is obsolete.
(6) Revenue Policy 41P071 - Claim of right. This policy is being rescinded because it was incorporated into 103 KAR 16.320.
(7) Revenue Policy 41P080 - Coal royalty income. This policy is being rescinded because it restates KRS 141.010(12)(d).
(8) Revenue Policy 41P100 - Deductibility of state taxes. This policy is being rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. A new administrative regulation, 103 KAR 16:360 - Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation’s Net Income, provides guidance on the deductibility of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.
(9) Revenue Policy 41P110 - Deductibility of state taxes. This policy is being rescinded because guidance on the deductibility of the Massachusetts corporation excise tax is provided in 103 KAR 16:360 - Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation’s Net Income.
(10) Revenue Policy 41P120 - Deductibility of state taxes. This policy is being rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.
(11) Revenue Policy 41P121 - Deductibility of state taxes. This policy is being rescinded because guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360 - Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation’s Net Income.
(12) Revenue Policy 41P125 - Windfall profit tax. This policy is being rescinded because it restates KRS 141.010(13) and the provision of the Internal Revenue Code referred to in the policy has been repealed.
(13) Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy is being rescinded because it restates KRS 141.010(12), (13), (14), and 141.120 and the holding of a court decision.
(14) Revenue Policy 41P140 - Subpart F Income. This policy is being rescinded because it conflicts with KRS 141.010(12).
(15) Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy is being rescinded because it was incorporated into 103 KAR 16.060.
(16) Revenue Policy 41P160 - First-Year Net Operating Loss. This policy is being rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.
(17) Revenue Policy 41P170 - Sales Factor. This policy is being rescinded because it is obsolete. Guidance on the sales factor is provided by 103 KAR 16.270.
(18) Revenue Policy 41P180 - Property Factor. This policy is being rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.
(19) Revenue Policy 41P190 - Net Rental Income. This policy is being rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290 - Apportionment Property Factor.
(20) Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy is being rescinded because it conflicts with KRS 141.205 and 103 KAR 16:270.
(21) Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy is being rescinded because it was incorporated into 103 KAR 16:340.
(22) Revenue Policy 41P220 - Separate Accounting. This policy is being rescinded because statements in the policy conflict with KRS 141.205(15). Parts of the policy not in conflict with KRS 141.205(15) were incorporated into 103 KAR 16:330.
(23) Revenue Policy 41P230 - Financial Organizations. This policy is being rescinded because it was incorporated into 103 KAR 16:150.
(24) Revenue Policy 41P240 - Homeowners Associations. This policy is being rescinded because it restates KRS 141.010 and 141.040.
(25) Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370 - Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.
(26) Revenue Policy 41P260 - Corporate Distributions, Liquidations, and Reorganizations. This policy is being rescinded because it restates KRS 141.010(10).
(27) Revenue Circular 41C020 - Safe harbor or finance leases. This circular is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:380 - Safe Harbor or Finance Leases.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation rescinds Department of Revenue policies and circulars relating to corporate income tax that either conflict with KRS Chapter 13A or have been incorporated into an existing administrative regulation.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to rescind polices and circulars which are no longer relevant and are in conflict with KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.130 provides that an administrative body shall not by internal policy, memorandum, or other form of action modify a statute or administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By rescinding the policies and circulars relating to corporate income tax, the Department of Revenue will be in compliance with KRS 13A.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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All corporations doing business in Kentucky under the provisions of KRS 141.010(25) will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Corporations filing a Kentucky corporation income tax return will follow only the statutes and administrative regulations as all policies and circulars will be rescinded.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Corporations complying with this administrative regulation may incur additional costs if they followed policies and circulars that are contrary to statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corporations will not have the administrative burden of complying with Department of Revenue policies and circulars.

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

(a) Initially: There will be a minimal cost initially to implement this administrative regulation for the Department of Revenue. Costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be no additional cost on a continuing basis as a result of this administrative regulation for the Department of Revenue.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation.

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

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

1. Tiering: Is tiering being applied? Tiering does not apply to this administrative regulation as it applies to all corporations filing a Kentucky corporation income tax return.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of this change.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There may be a small increase in revenues from taxpayers who followed policies and circulars that are contrary to statute.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There may be a small increase in revenues from taxpayers who followed policies and circulars that are contrary to statute.

(c) How much will it cost to administer this program for the first year? Unknown. A small increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amended After Comments)

103 KAR 16:380: Finance lease property, safe harbor lease property, or qualified lease property.

RELATES TO: KRS 141.010(12)(h), KRS 141.010(13)(e)
STATUTORY AUTHORITY: KRS 131.130(1), KRS 141.010(12)(h), KRS 141.010(13)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.010(12)(h) and KRS 141.010(13)(e) exclude the finance lease property provisions of the pre-1987 IRC-186(I)(8), repealed effective January 1, 1987, in determining Kentucky corporate net income for property placed in-service after 1986 and before 1987. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation provides a detailed explanation of transactions that are to be excluded when computing Kentucky taxable net income for corporation income tax purposes.

Section 1. Definitions. (1) "Finance lease property" is defined in the 1983 [pre-1987] IRC Section 168(f)(8), (B).

(2) "IRC" means Internal Revenue Code, [E].

(3) "Purchaser-lessor" means the party that has contractual ownership of the finance lease property, safe harbor lease property, or qualified lease property for federal tax purposes only and receives tax benefits such as investment tax credit and accelerated depreciation, [E] and

(4) "Qualified lease property" is defined in the 1982 IRC Section 168(f)(8)D.

(5) "Safe harbor lease property" is defined in the 1982 IRC Section 168(f)(8).

(6) "Neller-lessee" means the actual owner and user of the finance lease property, safe harbor lease property or qualified...
lease property

Section 2. Adjustments to Gross Income, Deductions, and the Apportionment Factor in Determining Kentucky Corporate Net Taxable Income: (1) In the seller-lessee:
(a) A depreciation deduction for finance lease property, safe harbor lease property, or qualified lease property shall be allowed as provided by IRC Sections 167 or 168 and related regulations;
(b) Lease payments made to the purchaser-lessee shall not be allowed as deductible expenses, and
(c) Interest payments received from the purchaser-lessee shall not be included in gross income; and
(d) The original cost of the finance lease property, safe harbor lease property, or qualified lease property shall be included in the property factor pursuant to KRS 141.120(8)(a). Lease payments made by the seller-lessee shall not be capitalized and included in the property factor pursuant to KRS 141.120(8)(a).
(2) A purchaser-lessee shall not be taxable in Kentucky under KRS 141.040 solely due to ownership of finance lease property, safe harbor lease property, or qualified lease property.
(3) For the purchaser:
(a) A depreciation deduction for finance lease property, safe harbor lease property, or qualified lease property shall not be allowed;
(b) Lease payments received from the seller-lessee shall not be included in gross income; and
(c) Interest payments made to the seller-lessee shall not be allowed as deductible expenses; and
(d) Finance lease property, safe harbor lease property, or qualified lease property shall be excluded from the purchaser-lessee property factor if otherwise subject to tax in Kentucky.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
CONTACT PERSON: Gary C. Moms, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 103 KAR 16:380
Contact person: Gary Moms
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.010(12)(b) and 141.010(13)(e) provide that a corporation shall exclude income and expenses related to finance lease property, safe harbor lease property or qualified lease property as provided in the 1982 and 1983 Internal Revenue Code Section 168 in computing a corporation's gross income and net income for purposes of Kentucky corporation tax. This administrative regulation provides guidance as to adjustments to gross income, net income, and the apportionment factor in determining Kentucky corporate taxable net income because of the exclusion of income and expenses resulting from finance lease property, safe harbor lease property or qualified lease property placed into service after July 1, 1982 and before 1987.
(b) The necessity of the administrative regulation: This administrative regulation provides guidance regarding the exclusion from Kentucky corporate net income the income and expenses resulting from finance lease property, safe harbor lease property or qualified lease property. Also, this administrative regulation provides guidance on the inclusion or exclusion of finance lease property, safe harbor lease property or qualified lease property in the property factor for purposes of apportionment.
(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 for the administration and enforcement of all tax laws.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to a corporation for the exclusion of income and expenses resulting from finance lease property, safe harbor lease property or qualified lease property when computing taxable net income for Kentucky income tax purposes, and if applicable, apportioning 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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All corporations doing business in Kentucky and having finance lease property, safe harbor lease property or qualified lease property will be affected by this administrative regulation.
(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A corporation having finance lease property, safe harbor lease property or qualified lease property will need to make adjustments to exclude the income and expenses resulting from the finance lease property, safe harbor lease property or qualified lease property when computing Kentucky taxable net income for corporation income tax purposes. Also, a corporation apportioning income in accordance with KRS 141.120(6) will need to make adjustments to the property factor.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the affected entities.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The taxable net income of each of the corporations involved in a finance lease property, safe harbor lease property or qualified lease property transaction will reflect finance lease property, safe harbor lease property or qualified lease property as a lease rather than a sale of property in accordance with Kentucky tax laws which will have a neutral tax effect on the two corporations involved in a finance lease property, safe harbor lease property or qualified lease property transaction.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no cost initially to implement this administrative regulation for the Department of Revenue.
(b) On a continuing basis: There will be no additional cost on a continuing basis to the Department of Revenue as a result of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all corporations doing business in Kentucky and having finance lease property, safe harbor lease property or qualified lease property.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amended After Comments)

103 KAR 17:140. Individual income tax - reciprocity - nonresidents.

RELATES TO: KRS 141.070
STATUTORY AUTHORITY: KRS 131.130(1), 141.050, 141.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. The purpose of this administrative regulation is to provide guidance to Kentucky residents and residents of states that Kentucky has negotiated reciprocal agreements under the provisions of 141.070.

Section 1. Under the provisions of KRS 141.070, the Department of Revenue has negotiated reciprocal agreements with other states exempting specific income from tax.

Section 2. The agreements apply only to the specific types of income listed and income from other sources may require the filing of a nonresident income tax return.

Section 3. The agreements provide the same exemption for the listed income from withholding tax.

Section 4. A list of states that Kentucky has negotiated reciprocal agreements and the type of income exemption available are listed below:

(1) Illinois. Residents of Illinois are exempt from Kentucky income tax on wages and salaries. Illinois extends the same exemption to Kentucky residents.

(2) Indiana. Residents of Indiana are exempt from Kentucky income tax on wages, salaries, and commissions. Indiana extends the same exemptions to Kentucky residents.

(3) Michigan. Residents of Michigan are exempt from tax on income earned from personal services in Kentucky. Personal services include salaries and wages. Michigan provides the same exemption for Kentucky residents.

(4) Ohio. Except as otherwise provided in this subsection, residents of Ohio are exempt from Kentucky income tax on salaries and wages. Ohio extends the same exemption to Kentucky residents. Effective for calendar years beginning on or after January 1, 2007, the reciprocity agreement with Ohio shall not apply with respect to wages which an S corporation pays to a shareholder-employee if the shareholder-employee is a "twenty (20) percent or greater" direct or indirect equity investor in the S corporation.

(5) Virginia. Virginia residents commuting daily to work in Kentucky are exempt from income tax on salaries and wages. Virginia extends the same exemption to Kentucky residents.

(6) West Virginia. Residents of West Virginia are exempt from Kentucky income tax on salaries and wages. Kentucky residents are afforded the same exemption by West Virginia.

(7) Wisconsin. Residents of Wisconsin are exempt from tax on income earned from personal services in Kentucky. Personal services include salaries and wages. Kentucky residents are extended the same exemption by Wisconsin.

Section 5. For a person [person] domiciled in one (1) of the states listed in Section 4, but who maintains a place of abode and spends [spends] more than 183 days in Kentucky during the year, reciprocity shall not apply and that person shall be considered a Kentucky resident for tax purposes.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Agreement between Director of Revenue for the State of Illinois and the Commissioner of Revenue of the Commonwealth of Kentucky, January 28, 1971:

(b) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Michigan, February 16, 1966:

(c) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and State of Ohio, January 7, 1972:

(d) Reciprocal Income Tax Agreement between Commonwealth of Kentucky and Commonwealth of Virginia, September 2, 1984:

(e) Reciprocal Income Tax Agreement between State of West Virginia and Commonwealth of Kentucky, April 8, 1965: and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 5 p.m.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
CONTACT PERSON: Gary Morris, Executive Director, Office of Income Taxation, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5495, fax (502) 564-3392.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Morris, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides information on reciprocal agreements between Kentucky and other states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the income included in the reciprocal agreements.

(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 for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will identify agreement between the Department of Revenue and other states.

(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: 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 applies to resident individuals that work in one of the states identified in the regulation and residents of those states that work in Kentucky.
   (4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals must notify their employer of state of residence and eligibility for exemption.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals complying with this administrative regulation will not incur additional cost.
   (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: Nothing
      (b) On a continuing basis: Nothing
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be needed for the implementation and enforcement of this administrative regulation.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Income Taxation, Department of Revenue.
3. Identify each state and federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? Nothing
   (d) How much will it cost to administer this program for subsequent years? Nothing

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Environmental Services
(Amended After Comments)

RELATES TO KRS Chapter 217B
STATUTORY AUTHORITY: KRS 217B.050, 217B.530
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:
   (1) Commercial structural pest control applicator;
   (2) Commercial structural pest control manager;
   (3) Commercial structural fumigation applicator;
   (4) Commercial structural fumigation manager; or
   (5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for contractor or manager licenses shall provide the following:
   (a) A completed "Commercial Structural Pest Control Examination Application";
   (b) A statement from a state-wide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
   (c) College transcripts if applicable; and
   (d) Written verification of pesticide work experience, pursuant to KRS 217B 520.
   (2) All applications for contractor or manager examinations shall be sworn to and notarized.
   (3) Pursuant to KRS 217B.525(1), all applications for contractor or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall not be returned.
   (4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.
   (5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.
   (6) The application of any applicant convicted of a felony shall require approval by the board.
   (7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.
   (8) The manager's license examination shall be timed and shall be completed within two (2) hours.
   (9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.
(2) Failure to submit, by July 1 of each year, a completed renewal registration form with a fee of $100 for each place of business maintained in Kentucky, shall result in the lapse of the license.

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(3) Any license holder who fails to submit a completed renewal registration form and the required fee by July 1 of each year, or whose license has been suspended or revoked, shall be required to take and pass a manager or applicator licensing examination before a new license may be issued.

(4) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

(a) Name, address, and home telephone number;

(b) Social Security number; and

(c) Job title.

(5) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after such change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termitic treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label; and

1. Loose cellulose debris of such size as can be raked from beneath structures shall be removed; and

2. All accessible termite tubes except in the case where a component of a termite baiting system is affixed to termite tubes shall be removed.

(b) Termitic pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(3) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and

(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following are the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) Determine moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:

1. Install a vapor barrier over approximately seventy (70) percent of the soil,

2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;

3. Install vents to give cross ventilation with a vapor barrier;

4. Improve drainage;

5. Waterproof the foundation, or

6. Any combination of the above.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. Separate areas of a structure shall be:

   a. Left front;
   b. Right front;
   c. Left rear;
   d. Right rear;
   e. Left center; and
   f. Right center. Moisture readings shall be recorded on a graph at the time of original sale of treatment. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed as defined in 302 KAR 29:010(22).

Section 6. Wood-destroying Organism Reports. All persons holding a commercial structural pest control applicator's license shall be required to submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report. Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment. All reports shall be signed by the licensed applicator or authorized agent for that company. Any performance of treatment for control of prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued shall be accompanied by a consumer disclosure and a graph.

Section 8. Inspections by the Department. At times as he may deem desirable, the commissioner or his authorized representative shall examine properties treated for the purpose of determining compliance with treatment standards in Section 5 of this administrative regulation. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations. If the license holder neglects or refuses to abate the violations, his license shall be suspended, as provided by KRS 217B.545, except for good cause shown. While his license is suspended, the license holder shall be required to treat all properties on which he had a violation, if they have been found, but shall not otherwise service any current contracts or solicit any new business. He shall notify the department of the dates of all reexaminations and retreatments. When all properties previously reported in an unsatisfactory condition have been reinspected and retreated, the department shall then make the reinspections at its earliest convenience. If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigator or fumigants and no fumigation operation shall be conducted unless at least two (2) individuals shall work jointly and concurrently in the release of a fumigator or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation. Each license or certification holder, before performing general fumigation in any structure or enclosed space, shall notify in writing, the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed. This written information
shall be given to each fire department and police department no later than three (3) hours prior to the time set forth in the notice for the release of the fumigant. A shorter time for filing written notice of fumigation of vessels, aircraft, boxcars, trucks or common carriers shall be permitted, and the time for the notification shall only be in accord with the fumigating operation. The notice shall in each and every case give the following information:

(a) Location of structure or enclosed space to be fumigated as well as its character and use;
(b) The fumigant to be used;
(c) The date and time of release of fumigant and approximate exposure period; and
(d) The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this section shall not apply to spot fumigation.

(4) Structures to be vacant. Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation. It shall be the duty of the operator in charge to make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs. Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

<table>
<thead>
<tr>
<th>Skull and Crossbones</th>
<th>Danger Fumigation with (Name of Fumigant) Deadly Poison All persons are warned to keep away</th>
</tr>
</thead>
</table>

Name of Fumigator:
Address:
Telephone:
Operator in Charge:

Day Phone:
Night Phone:
The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final pre-fumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall then make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;
(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;
(c) That no open fires or open flames, pilot lights or oil lamps are burning;
(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and
(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen. During the period of fumigation and after the structure has been vacated and declared safe, a capable, alert watchman or guard, or watchmen and guards, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen. It shall be the duty of said individual(s) to prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period, and while the structure or enclosed space is being ventilated after the exposure period. Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. If a warning agent is used, the above subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispensers; and
(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses.

(1) Persons holding general pest and wood-destructive organism or fumigation licenses may continue to do business in those categories of pest control for which they are licensed under KRS 217B 515(1)(b). A general pest and wood-destructive organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29.020.

(3) A person holding a general pest and wood-destructive organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This does not relieve them from obtaining certification under the federal law as contained in the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 11. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29.020. To maintain certification, persons certified pursuant to KRS 217B.190(3) shall meet the requirements of 302 KAR 29.070.

Section 12. Pesticide Application in Schools. Each school district shall be required to implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the following:

(1) Advance notification of pesticide use:

(a) In the event a pesticide is to be applied in and around a school, an advance notification of pesticide use shall be given or sent by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals ac-
signed to provide services at the school, and parents or guardians of students enrolled in the school as determined by contact information maintained on file. Notice shall not be required if:

1. A pesticide is to be applied at a time when school is not in session under the calendar set by the school board; or
2. No other person other than the applicator and the minimum number of school staff necessary to allow the applications are scheduled to be in the building during the application and for at least twenty-four (24) hours after the application. [Such notice shall not be given if the pesticide-use is to take place during a time the school is not in session, or the students and staff members are not present on the school grounds at least forty-eight (48) hours after the pesticide-application. At the start of each semester or school year segment, a verifiable notice shall be sent or given to all staff members, health professionals, and parents or guardians of school children concerning twenty-four (24) hour advance notification of pesticide applications.]

(b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty-four (24) months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel. [Maintain a register of these requests and advance notification]

(2) The notification shall include the following:

(a) The [anticipated] date of possible pesticide application if special circumstances arise and the advance notice is not provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat or that may be injurious to a normal learning environment, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and what pesticide was applied;

(b) A description of the general location of the pesticide application;

(c) The routine scheduled service. A description of pests treated [encountered], the brand name of the pesticides applied, including the [a] list of active ingredients, the [and] pesticide application method, and

(d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise and advance notice cannot be provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. In this situation, the notice shall explain the reasons why advance notice was not provided and shall include the information required in subsection 2(a) through (d) of this section.

(4) For purposes of notification under this section, the certified applicator shall only be required to furnish to the school at least thirty-six (36) hours prior to the application of a pesticide, the information necessary under subsection (2)(a) through (2)(c) of this section for the school to provide the notification to the certified applicator. If other than an employee of the school, shall furnish all items required in the notification section of subsection 2 of this section a minimum of twenty-four (24) hours prior to application of a pesticide, allowing the school ample time to make notification, if applicable.

(5) Qualifications for pesticide applicators Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. [Applicants currently holding a Category-7(a) certification on the effective date of this administrative regulation shall receive their Category-7(b) certification without additional examination.]

(6) Exemptions. This policy shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal clearing activities;

(b) Personal Insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and

(d) Manufactured paste or gel bar insecticides placed in areas where humans or pets do not have reasonable access to the bait; and

(e) Paraffin-based rodent control products placed in industry-identified tamper-resistant bait stations.

Section 13. Pesticide Application for Health Care Centers. Qualifications. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. [Applicants currently holding a Category-7(a) certification on the effective date of this administrative regulation shall receive their Category-7(b) certification without additional examination.]

Section 14. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commercial Structural Pest Control Examination Application";

(b) "Monthly Report of Wood-Destroying Organism Treatments" form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: October 8, 2006
FILED WITH LRC: November 8, 2006 at 10 a.m.
CONTACT PERSON: Mark Farrow, General Counsel, 32 Fountan Place, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5015.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Farrow, Chief of Staff
(1) A brief summary of:

(a) What this administrative regulation does: Requires advance notice of pesticide application in schools.

(b) The necessity of this administrative regulation: To better define the notice requirement for pesticide applications in schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes requirements applicable to license and practice of commercial structural pest control fumigation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will better protect the health and well being of students and school staff.

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

(a) How the amendment will change this existing administrative regulation: Instead of a blanket notice before each semester, notice will be required 24 hours before application of pesticides.

(b) The necessity of the amendment to this administrative regulation: To better protect the health and well being of students and school staff.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B requires the department to regulate pesticide applications.

(d) How the amendment will assist in the effective administration of the statutes: The regulation better defines and streamlines the notification provision of the existing law. It sets out when notice is not required. Exempts paraffin-based rodent control products from the notice provision. Deletes language which allowed holders of 7(a) certification to receive 7(b) certification without additional examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All institutions for teaching children, including but not limited to, preschools, child day care centers, and primary and secondary schools will be affected.

(4) Provide an analysis of how the entities identified in question 3 will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to provide prior notice of pesticide applications, explain in the notice several items of information, maintain a copy of the notification, and have the notices available for inspection by department employees. Requires pesticide applicators to provide certain information to the affected entities.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question. There is already a notice requirement and this amendment will not add to the cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question. The students and staff of the entities will be better protected by this amendment.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: $0, as we already require an IPM program for schools.
(b) On a continuing basis: $0, same as (5)(a).
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and federal funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees are required.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? Tiering is not applied as all affected entities will have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All institutions for teaching children, including but not limited to, preschools, kindergarten, child day care centers, primary, and secondary schools will be impacted by this regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 224.140.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenues and expenses will be negligible if any.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? Negligible
(d) How much will it cost to administer this program for subsequent years? Negligible

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

Revenues (+/-)
Expenditures (+/-)

Other Explanation: Schools are now required to provide advance notification. The current requirement is unwieldy and ambiguous. The proposed regulation will better streamline and define the regulatory requirements and will lessen the paperwork for schools.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department For Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 51:210. CAIR NOx annual trading program.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants, pursuant to the federal mandate published under the Clean Air Interstate Rule (CAIR), 40 C.F.R. 96.101 to 96.188 [96-176]. This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to CAIR NOx units in Kentucky that are subject to 40 C.F.R. 96.104.

Section 2. Compliance Requirements. CAIR NOx units shall comply with the following requirements:
(a) 40 C.F.R. 96.101 to 96.108 (Subpart AA), "CAIR NOx Annual Trading Program General Provisions";
(b) 40 C.F.R. 96.110 to 96.115 [96-144] (Subpart BB), "CAIR Designated Representative for CAIR NOx Sources";
(c) 40 C.F.R. 96.120 to 96.124 (Subpart CC), "Permits";
(d) 40 C.F.R. 96.150 to 96.157 (Subpart FF), "CAIR NOx Allowance Tracking System";
(e) 40 C.F.R. 96.160 to 96.162 (Subpart GG), "CAIR NOx Allowance Transfers"; [and]
(f) 40 C.F.R. 96.170 to 96.175 [96-176] (Subpart HH), "Monitoring and Reporting"; [and]
(g) 40 C.F.R. 96.180 to 96.188 (Subpart II), "CAIR NOx Out-Of Units".

Section 3. Methodology for the Allocation and Sale of CAIR NOx Annual Allowances. The number of CAIR NOx allowances to be allocated to each CAIR NOx unit by the cabinet and to be sold by the Commonwealth of Kentucky shall be determined pursuant to this section.
(1) The total number of CAIR NOx allowances shall be:
(a) For the 2009 through 2014 control periods, 83,205 tons, as specified in 40 C.F.R. 96.150; and
(b) For the 2015 control period and thereafter, 69,337 tons, as specified in 40 C.F.R. 96.150. [the number of CAIR NOx allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP)].

(2) The total number of CAIR NOx allowances assigned to Kentucky shall be divided into separate pools as follows:
(a) Ninety-eight (98) percent of this amount allocated for each control period to units that commence commercial operation before:
2. January 1, 2009, for the control period 2015; and
3. Thereafter, January 1 of the year that is six (6) years before the first year of the next control period; and
(b) Two (2) percent of this amount for each control period sold by the Commonwealth of Kentucky with the proceeds deposited into Kentucky's general fund.

(3) For each CAIR NOx unit, the baseline heat input or adjusted control period heat input in mmBtu shall be determined and shall be used to determine CAIR NOx allowances for the pool specified in subsection (2)(a) of this section as follows:
(a) For CAIR NOx units commencing operation before January
1, 2001, and
1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005; or
2. For units not having operated each calendar year for a period of five (5) or more consecutive years, the baseline heat input shall be established during the next allocation period when the unit has five (5) consecutive years of operation, using the average of the three (3) highest amounts of the unit's adjusted control period heat input for the most recent five (5) consecutive years of operation; or
Not previously operating each calendar year for a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for five (5) consecutive years of operation.

(b) For units commencing operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the most recent five (5) consecutive years of operation; or
2. For units that have not operated each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall not be established. For purposes of allocations, the heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, the:
1. Adjusted control period heat input for a control period of not operating shall equal zero; and
2. Cabinet shall allocate CAIR NOx allowances for the unit.

(4) The adjusted control period heat input for each year shall be calculated as follows:
(a) If the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent.
(b) If the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; or
(c) If the unit is subject to paragraphs (a) or (b) of this subsection, the unit's control period heat input for that year shall be multiplied by forty (40) percent.

(5) For a calendar year, the unit's control period heat input and the unit's status as coal-fired or oil-fired shall be determined:
(a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;
(b) By the best available data reported to the cabinet for the unit if the unit is not otherwise subject to 40 C.F.R. Part 75; or
(c) By the best available data obtained by the cabinet.

For CAIR NOx units included in the pool specified in subsection (2)(a)(1) of this section, the cabinet shall allocate CAIR NOx allowances to each CAIR NOx unit in an amount equal to the result obtained by:
(a) Multiplying the total amount of CAIR NOx allowances specified in subsection (2)(a)(1) of this section by the baseline heat input for each unit or [and] the heat input established under subsection (3)(c) of this section;
(b) Divided by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx units and
(c) Rounding to the nearest whole CAIR NOx allowance, as appropriate.

(7) The cabinet shall submit to the U.S. EPA and CAIR NOx sources the CAIR NOx allowances to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA by:
(b) October 31, 2009, for control period 2015; and
(c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

Section 4. Compliance Supplement Pool. The CAIR designated representative may request early reduction credits and the allocation of CAIR NOx allowances from the compliance supple-
submit to the U.S. EPA the allocations under this section.

(7) By January 1, 2010, the U.S. EPA shall record the allocations submitted under subsection (6) of this section.

Section 5. Sale of CAIR NOx Allowances by the Commonwealth of Kentucky. (1) The Commonwealth of Kentucky shall estab-

lish an account pursuant to 40 C.F.R. 95.151(b) (95-3514(b)) for the purpose of selling the CAIR NOx allowances in the pool specified in Section 3(2)(b) of this administrative regulation.

(2) The proceeds from the sale of the CAIR NOx allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

LOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
CONTACT PERSON: Gerry Ennis, Environmental Technolo-

gist III, Division for Air Quality, 803 Schenkell Lane, Frankfort, Ken-

ucky 40601, phone (502) 573-5382, fax (502) 573-5787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 51:210
Contact Person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the requirements of the federally mandated Clean Air Interstate Rule (CAIR) and establishes the requirements for the control of nitrogen oxides (NOx) emissions from any electric generating unit that is subject to the provisions of that program. This regulation provides the framework to establish the allowance allocation and trading programs associated with the federal cap and trade portion of the federal programs. This administrative regulation will assist in mitigating interstate transport of NOx emissions which contributes to both ozone and fine particulate (PM2.5). This regulation also continues a program that began with the NOx SIP Call, where Kentucky sells 2% of the NOx allowances.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their State Implementation Plans (SIPs) to include control measures to reduce emissions of nitrogen oxides. NOx is a precursor to both ozone and fine particulate (PM2.5). Reducing the emissions of NOx will assist 8-hour ozone and PM2.5 nonattainment areas in achieving the national ambient air quality standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abate-

ment, and control of air pollution. This administrative regulation is proposed to reduce NOx emissions from electric generating units, if Kentucky does not adopt measures to implement the federal CAIR program, U.S. EPA will and has already taken the first steps to impose the Federal Implementation Plan (FIP) in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce NOx emissions resulting in the protc-

tion of human health and the environment. If Kentucky does not adopt measures to implement the federal CAIR program, U.S. EPA will implement a Federal Implementation Plan (FIP) to implement the federal program in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation does not amend any existing administrative regulation. Although there is a separate regulation in place to implement the federal NOx SIP Call, this regulation addresses the federal Clean Air Interstate Rule for control-

ling annual NOx emissions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(c) How the amendment conforms to the content of the author-

izing statutes: This administrative regulation does not amend any existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation does not amend any existing administrative regulation.

(3) List the type and number of individuals, businesses, organiza-

tions, or state and local governments affected by this administra-

tive regulation. The owners and operators, along with a designated representative, of electric generating utilities will be subject to this administrative regulation. Kentucky citizens will benefit from the emission reductions associated with this regulation with fewer air pollution related illnesses in areas Impacted by high ozone and particulate matter levels.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected electric generating unit will have to possess allowances sufficient to cover their annual NOx emissions. In the absence of the required allocations, the affected electric gen-

erating unit will have to trade or purchase allocations from the CAIR NOx Annual Trading Program to ensure NOx allowances are held by the utility equal to the annual NOx emissions.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in ques-

tion (3) to achieve the exact cost or each utility or unit impact program is unknown. Each existing electric generating unit in the state with requirements under this program will have NOx allowances allocated to it. Many utilities in the state have already implemented some form of NOX control in order to meet the previous require-

ments of the NOX SIP Call that began in 2004. Adapting the provi-

sions of the federal CAP and Trade Program ensures that sources in Kentucky will have the ability to meet the federal/state require-

ments in the most cost effective manner for their units. In adopting the federal rule, U.S. EPA estimated the cost per ton to reduce NOx emissions at $800-$1500 per ton on a regional basis. Many of the units in installing controls to meet the former seasonal NOx SIP Call, may simply choose to run those units on an annual basis, rather than seasonal, to effectively reduce their emissions, thereby already holding sufficient allowances without further capital costs. Other utilities may choose to not control at one facility, but rely on controls at another within their network and "trade" emissions from one unit to another in order to demonstrate compliance, under this scenario, depending on the units in question, the costs of complying could be minimal. Another option would be for sources to pur-

chase additional allowances to cover their emissions, rather than implement additional controls. At present the cost of a NOx allow-

ance under the NOx SIP Call is approximately $1,200. Other sources may choose to install additional controls at facilities to reduce NOX emissions. Utilities have many options available to them to implement the controls in the most cost effective means possible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): U.S. EPA in adopting the CAIR program, has stated that nationwide, adoption of the CAIR program will mean a savings in health care costs of $85 - $100 billion by 2015. The public will benefit from this administrative regulation by the reduction in health care costs associated with existing levels of ozone and fine particulate. In promulgating this regulation the state is ensuring that electric generating units operating within the Com-

monwealth will have flexibility in meeting the requirements to hold allowances to cover NOx emissions from the source. This regulation is not more stringent than the federal rule and in fact, the state is distributing more allowances to the existing electric generating units in the state than the federal model rule.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation. The
cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed 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, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to electric generating units producing more than 25 MWs for sale.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in the Code of Federal Regulations, 40 C.F.R. 96.101 to 96.188.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan to reduce the emissions of nitrogen oxides. The federal regulation contains model rules for multi-state cap and trade programs for NOx emissions. The model rules provide states the flexibility to meet the required emissions reductions in a flexible and cost-effective manner. Each affected electric generating unit will have to possess allocations for the tons of emissions of NOx for each control period. In the absence of the required allocations, the affected electric generating unit will have to purchase allocations from the CAIR NOx Annual Trading Program or for excess emissions of NOx. Each electric generating unit will have flexibility in controlling NOx emissions from the source.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation model rule and will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (excluding cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be further impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate substantial revenue. A similar program, implemented in 2004 has generated approximately $17 million to date. It is difficult to supply an exact amount due to the fluctuation in cost of a NOx allowance, and further depends on need by the electric generating utility sector throughout the 28 state CAIR Region.

(b) How much will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will bring substantial revenues to the state, although it is impossible to state a specific amount since the cost of NOx allowances fluctuates on a routine basis. Additionally, the cost per allowance is market driven depending on the need of the allowances available for purchase. The cost per ton at this time is $800-$1200 per allowance.

(c) How much will it cost to administer this program for the first year? The Division's operating budget continues as the source of funding for the implementation of this program. No additional personnel or resources should be needed to implement this program because the existing program to sell allowances will end when this one begins.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years.

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

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

**Department For Environmental Protection**

**Division For Air Quality**

(Amended After Comments)

**401 KAR 51:220. CAIR NOx ozone season trading program.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published under the Clean Air Interstate Rule (CAIR), 40 C.F.R. 96.301 to 96.338 (96.374) This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to:

1. CAIR NOx Ozone Season units in Kentucky that are subject to 40 C.F.R. 96.304; or
2. An industrial boiler or turbine as defined in 401 C.R. 51:001 that was previously allocated NOx allowances pursuant to 401 KAR 51:150; or
3. A unit that qualifies as a co-generation unit pursuant to 40 C.F.R. 96.304(b)(1)(i) and that was previously allocated NOx allowances under the NOx SIP Call pursuant to 401 KAR 51:150. [A fossil-fueled boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBtu per hour or more that was previously allocated NOx allowances pursuant to 401 KAR 51:160.]

Section 2. CAIR NOx Ozone Season units shall comply with the following requirements:

1. 40 C.F.R. 96.301 to 96.308 (SubpartAAAA), "CAIR NOx Ozone Season Trading Program General Provisions";
2. 40 C.F.R. 96.310 to 96.315 [96.314] (SubpartBBBB), "CAIR Designated Representative for CAIR NOx Ozone Sources";
3. 40 C.F.R. 96.320 to 96.324 (SubpartCCCC), "Permits";
4. 40 C.F.R. 96.330 to 96.337 (SubpartFFFFF), "CAIR NOx
Ozone Season Allowance Tracking System*; (5) 40 C.F.R. 96.360 to 96.362 (Subpart GGGG), "CAIR NOx Ozone Season Allowance Transfers*; and (6) 40 C.F.R. 96.370 to 96.376 (Subpart HHHH), "Monitoring and Reporting."

**Section 3. Methodology for the Allocation of CAIR NOx Ozone Season Allowances. The number of CAIR NOx Ozone Season allowances to be allocated to each CAIR NOx Ozone Season unit by the cabinet and to be sold by the Commonwealth of Kentucky shall be determined pursuant to this section.

(1) The total number of CAIR NOx Ozone Season allowances shall be:

(a) For the 2009 through 2014 control periods, 35,199 tons, which includes 35,045 tons as specified in 40 C.F.R. 96.340, and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation; and

(b) For the 2015 control periods and thereafter, 30,651 tons, which includes 30,587 tons as specified in 40 C.F.R. 96.340, and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation.

The number of CAIR NOx Ozone Season allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP).

The total number of CAIR NOx Ozone Season allowances assigned to Kentucky shall be divided into separate pools as specified in this subsection. The number of allowances specified in subsection (1) of this section with:

(a) [as follows]:

---

(a) The number of CAIR NOx Ozone Season allowances specified in Kentucky's approved SIP for CAIR NOx Ozone Season units specified in Section 1(2) of this administrative regulation.

---

(b) Ninety-eight (98) percent of this amount allocated for each control period to units that commence operation or commence commercial operation before:


2. [b] January 1, 2009, for the 2015 control period; and

3. [c] Thereafter, before January 1 of the year that is six (6) years before the next control period, and

(b) [2] Two (2) percent of this amount for each control period sold by the Commonwealth of Kentucky with the proceeds deposited into Kentucky's general fund; and

(b) The number of CAIR NOx Ozone Season allowances specified in Kentucky's approved SIP for CAIR NOx Ozone Season units specified in Section 1(2) of this administrative regulation.

(3) For each CAIR NOx Ozone Season unit, the baseline heat input or adjusted control period heat input in mmBtu shall be determined and shall be used to determine CAIR NOx Ozone Season allowances for the pool [poole] specified in subsection (2) [subsection (2)(a) and subsection (2)(b)] of this section as follows:

(a) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation on or after January 1, 2001, and:

1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005 or

2. For units not having operated each calendar year for a period of five (5) or more consecutive years, the baseline heat input shall be established during the next allocation period when the unit has five (5) consecutive years of operation, using the average of the three (3) highest amounts of the unit's adjusted control period heat input for the most recent five (5) consecutive years of operations or, if not previously operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the five (5) consecutive years of operation.

(b) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three highest amounts of the unit's adjusted control period heat input over the most recent consecutive five (5) years of operation; or

(c) For CAIR NOx Ozone Season units that have not operated each calendar year during a period of five (5) or more consecutive years, the average of the three highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, where the:

1. Unit shall not establish a baseline heat input;

2. Adjusted control period heat input for a control period of not operating shall equal zero;

3. Cabinet shall allocate CAIR NOx Ozone Season allowances for the unit.

(4) The adjusted control period heat input for each ozone season shall be calculated as follows for CAIR NOx Ozone Season units specified in subsection (2)(a) of this section:

(a) if the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent; and

(b) if the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; and

(c) If the unit is not subject to paragraphs (a) or (b) of this subsection, the unit's control period heat input for that year shall be multiplied by forty (40) percent; and

(5) The adjusted control heat input for CAIR NOx Ozone Season units as specified in subsection (2)(b) of this section shall equal the unit's control period heat input multiplied by 100 percent.

(6) For an ozone season, the unit's control period heat input and the unit's status as coal-fired or oil-fired shall be determined:

(a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;

(b) By the best available data reported to the cabinet for the unit if the unit is not otherwise subject to 40 C.F.R. Part 75; or

(c) By the best available data obtained by the cabinet.

(7) For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(a)(1) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:

(a) Multiplying the total amount of CAIR NOx Ozone Season allowances specified in subsection (2)(a)(1) of this section by the baseline heat input for each unit or [and] the heat input established under subsection (3)(c) of this section;

(b) Dividing by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx Ozone Season units; and

(c) Rounding to the nearest whole CAIR NOx Ozone Season allowance, as appropriate.

(8) [90] The cabinet shall submit to the U.S. EPA the CAIR NOx Ozone Season allowances [allowances] to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA by:


(b) October 31, 2009, for control period 2015; and

(c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission.

Section 4. Sale of CAIR NOx Allowances by the Commonwealth of Kentucky.

(1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.351(b) for the purpose of selling the CAIR NOx Ozone Season allowances in the pool specified in Section 3(2)(b) of this administrative regulation.

(2) The proceeds from the sale of the CAIR NOx Ozone Season allowances shall be deposited in the general fund of the Commonwealth of Kentucky. For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(b) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:

(a) Multiplying the total number of CAIR NOx Ozone Season allowances...
allowances specified in subsection (3)(b) of this section by the baseline heat input for each unit and the heat input established under subsection (3)(e) of this section; 
(b) Dividing the total amount of baseline heat input and the heat input established under subsection (3)(d) of this section for all applicable units specified in subsection (3)(b) of this section; and 
(c) Rounding to the nearest whole CAIR Ozone Season NOx allowance, as appropriate.

Section 4. CAIR NOx Ozone Season Allowance Tracking System.

(1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.361(a) for the purpose of selling the CAIR NOx Ozone Season allowances in the pool specified in Section 3(2)(e) of the administrative regulation. The proceeds from the sale of the CAIR NOx Ozone Season allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

(2) A CAIR NOx Ozone Season unit shall comply with the CAIR NOx Ozone Season Allowance Tracking System requirements established in 40 C.F.R. 96.361 to 96.367.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
CONTACT PERSON: Genny Ennis, Environmental Technologist III, Division for Air Quality, 603 Shenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3482, fax (502) 573-3787, email genny.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Genny Ennis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates the requirements of the federally mandated Clean Air Interstate Rule (CAIR) and establishes the requirements for the control of nitrogen oxides (NOx) emissions from any electric generating unit or industrial boiler that is subject to the provisions of that program. (40 C.F.R. 95.301 to 95.383). This administrative regulation provides the framework to establish the allowance allocation and trading programs associated with the seasonal federal cap and trade portion of the federal program. This regulation will assist in mitigating interstate transport of NOx emissions associated with ozone and fine particulate (PM2.5). This regulation also continues a program that began with the NOx SIP Call, where Kentucky sells 2% of the NOx allowances allocated to the state.
(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their State Implementation Plans (SIPs) to include control measures to reduce emissions of nitrogen oxides. NOx is a precursor to ozone and fine particulate (PM2.5). Reducing the emissions of NOx will assist 8-hour ozone and PM2.5 nonattainment areas in achieving the national ambient air quality standard.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation is proposed to reduce NOx emissions from electric generating units or industrial boilers. If Kentucky does not adopt measures to implement the federal CAIR program, U.S. EPA will and has already taken the first steps to impose a Federal Implementation Plan (FIP) in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce NOx emissions resulting in the protection of human health and the environment. If Kentucky does not adopt measures to implement the federal CAIR program, U.S. EPA will implement the federal program in Kentucky.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation does not amend any existing administrative regulation. However, a similar program had previously been implemented in Kentucky known as the NOx SIP Call.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation does not amend any existing administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend any existing administrative regulation.
(d) How the amendment will assist in the effective administration of statutes: This administrative regulation does not amend any existing administrative regulation.
(e) List the type of non-federal action (i.e., action of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The owners and operators, along with a designated representative, of electric generating utilities or industrial boilers will be subject to this administrative regulation. Kentucky citizens will benefit from the emission reductions associated with this regulation with fewer pollution related illnesses in areas impacted by high ozone and particulate matter levels.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected electric generating unit will have to possess allocations sufficient to cover their seasonal NOx emissions. In the absence of these required allocations, the affected electric generating unit will have to trade or purchase allocations from the CAIR NOx Seasonal Tracking Program to ensure NOx allowances are held by the utility equal to the seasonal NOx emissions.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): U.S. EPA in adopting the CAIR program has stated that nationwide, adoption of the CAIR program will mean a savings in health care costs of $8.5-$100 billion dollars by 2015. The public will benefit from this administrative regulation by the reduction in health care costs associated with existing levels of ozone and fine particulate. In promulgating this regulation the state is ensuring that electric generating units operating within the Commonwealth will have flexibility in meeting the requirements to hold allowances to cover NOx emissions from the source. This regulation is not more stringent than the federal rule and in fact, the state is distributing more allowances to the existing electric generating units in the state than the federal model rule.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.
(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed 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, nor does it directly or
indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to electric generating units producing more than 25 MWe for sale.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in the Code of Federal Regulations, 40 C.F.R. 96.301 to 96.388.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan to reduce the emissions of nitrogen oxides. The federal regulation contains model rules for multi-state cap and trade programs for NOx emissions. The model rules provide states the ability to meet the required emissions reductions in a flexible and cost-effective manner. Each affected electric generating unit or industrial boiler will have to possess allocations for the tons of emissions of NOx for each control period. In the absence of the required allocations, the affected electric generating unit or industrial boiler will have to purchase allocations from the CAIR NOx Ozone Season Trading Program for excess emissions of NOx. Each electric generating unit or industrial boiler will have flexibility in controlling NOx emissions from the source.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation model rule and will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, and 42 U.S.C. 7410

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues. The proposed regulation would not affect revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues. The proposed regulation would not affect revenues.

(c) How much will it cost to administer this program for the first year? The division's operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years.

Note: While 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 for Air Quality
(Amended After Comments)

401 KAR 51:230. CAIR SO2 trading program.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.124, 51.125, 73, 74, 77, 78, Part 96, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the provisions of the CAIR SO2 Trading Program as codified at 40 C.F.R. 96.201 to 96.288 for applicable sources located in the Commonwealth of Kentucky.

Section 1. Applicability. This administrative regulation shall apply to CAIR SO2 sources and CAIR SO2 units under the CAIR SO2 Trading Program located in Kentucky that are subject to 40 C.F.R. 96.204.

Section 2. Compliance requirements. CAIR SO2 sources and CAIR SO2 units shall comply with the following requirements:

(1) 40 C.F.R. 96.201 to 96.208 (Subpart AAA), "CAIR SO2 Trading Program General Provisions";

(2) 40 C.F.R. 96.210 to 96.215 [96.214] (Subpart BBB), "CAIR Designated Representative for CAIR SO2 Sources";

(3) 40 C.F.R. 96.220 to 96.224 (Subpart CCC), "Permits";

(4) 40 C.F.R. 96.250 to 96.257 (Subpart FFF), "CAIR SO2 Allowance Tracking System";

(5) 40 C.F.R. 96.250 to 96.262 (Subpart GGG), "CAIR SO2 Allowance Transfers";

(6) 40 C.F.R. 96.270 to 96.275 [96.276] (Subpart HHH), "Monitoring and Reporting"; and

(7) 40 C.F.R. 96.280 to 96.288 (Subpart III), "CAIR SO2 Opt-In Units".

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 15, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 603 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3392, fax (502) 573-3787, email gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions of the Clean Air Interstate Rule (CAIR) SO2 Trading Program, 40 C.F.R. 96.201 to 96.288, for applicable sources in Kentucky. This administrative regulation will assist in mitigating interstate transport of SO2 emissions. This regulation incorporates the pertinent portions of the federal program that deal with emission reporting and permitting only. The allowance allocation and cap and trade portions of the SO2 portion of this program will continue as a federal program and will not be delegated to states.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring 28 states and the District of Columbia to revise their State Implementation Plans (SIPs) to include control measures to reduce emissions of sulfur dioxide. Reducing the emis-
sions of SO\textsubscript{2} will assist areas in achieving national ambient air quality standards. This regulation only serves to incorporate permitting and reporting components of the program, not the allowance allocation mechanisms associated with the program. 

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation is proposed to reduce SO\textsubscript{2} emissions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce SO\textsubscript{2} emissions resulting in the protection of human health and the environment. U.S. EPA will continue to collect and track SO\textsubscript{2} allowances. Kentucky will include applicable requirements in federally enforceable permits.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(b) The necessity of this amendment to the existing administrative regulation: This administrative regulation does not amend any existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation does not amend any existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation does not amend any existing administrative regulation.

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

Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 1, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW\textsubscript{e} producing electricity for sale.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each affected CAIR SO\textsubscript{2} unit will have to possess allowances sufficient to cover their emissions for each control period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for complying with these regulatory requirements in Kentucky will be no greater than the cost in complying with the federal requirements since Kentucky will not impose a more stringent control program for SO\textsubscript{2} within the Commonwealth. Many EGU\textsubscript{s} are already taking steps to install controls where necessary in order to meet this federal mandate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation incorporates the necessary portions of the federal CAIR Program for SO\textsubscript{2} dealing with permits and enforcement matters. U.S. EPA estimates the SO\textsubscript{2} portion of the CAIR program in combination with the NO\textsubscript{x} portion will mean a savings in health care costs of $85-$100 billion by 2015. The public will benefit from this administrative regulation by the reduction in health care costs associated with existing levels of fine particulate.

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

(a) Initially: The cabinet will incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed 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, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies to fossil-fuel-fired electric generating units producing more than 25 MW\textsubscript{e} for sale.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in the Code of Federal Regulations, 40 C.F.R. 96.201 to 96.288.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224 20-110, and 224 20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan to reduce the emissions of sulfur dioxide. This administrative regulation follows the established federal standards for the CAIR SO\textsubscript{2} Trading Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation follows the federal regulation provisions and will not impose any more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No known units, parts or divisions of state or local government will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.18, 75.20, 75.24, 75.70, 75.75, 40 U.S.C. 7410.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues. The proposed regulation would not affect revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues. The proposed regulation would not affect revenues.

(c) How much will it cost to administer this program for the first year? The division's operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation will have no effect on costs for administering the program in subsequent years.

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

Revenues (+/-): There is no known effect on revenues.

Expenditures (+/-): There is no known effect on expenditures.

Other Explanation: There is no further explanation.
JUSTICE AND PUBLIC SAFETY CABINET  
Department of Juvenile Justice  
Treatment Program for Juveniles with  
Sexual Behavior Problems and Offenses  
(Amended After Comments)


RELATES TO: KRS 15A.065, 15A.067, 200.080-120, Chapters 600-010.

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), KRS 635 520, 640.120, 645 250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A 305(5), 605.150, 635.095, 635.520, 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 material is incorporated by reference:

(a) "Department of Juvenile Justice Policy and Procedures Manual: Treatment Program for Juveniles with Sexual Behavior Problems and Offenses", November 15, 2006 [August 16, 2006], which includes the following:

800 Treatment Program for Juveniles with Sexual Behavior Problems and Offenses (Amended 11/15/06, 08/14/06)
801 Intake and Assessment (Amended 11/15/06, 08/14/06)
802 Sex Offender Specific Treatment Protocol (Amended 11/15/06, 08/14/06)
803 Polygraph Examination (Amended 11/15/06, 08/14/06)
804 Juvenile Sexual Offender Registry (Amended 11/15/06, 08/14/06)
805 Youthful Offenders (Amended 11/15/06, 08/14/06)
806 Juvenile Sex Offender Treatment and Assessment Provider (Amended 11/15/06, 08/14/06)

(b) The "Treatment Program for Juveniles with Sexual Behavior Problems and Offenses", [Amended 11/15/06, 08/14/06], (c) The "Estimate of Risk of Adolescent Sex Offense Recidivism (ERASOR)", 06/15/06.

(d) The "Juvenile Sex Offender Assessment Protocol (JSOAP)", 06/15/06.

(e) 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: November 15, 2006  
FILED WITH LC: November 15, 2006 at noon  
CONTACT PERSON: LaDonna Koebel, Staff Attorney, 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, 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, treatment providers and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, and 635.515 and 635.520 and to specifically provide a treatment protocol for youth with sexual behavior problems and offenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol 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 sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers 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 will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice for sexual offenses, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of HB 3 [2006], 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, procedures and a specific sex offender treatment protocol 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 assist the Department of Juvenile Justice to treat sexual offenders more efficiently and uniformly.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 3 treatment providers, and 21 DJJ employees.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, or new, or by the change if it is an amendment: By providing and implementing a clear and concise sexual offender treatment protocol for the Department of Juvenile Justice employees, treatment providers and the residential and community population, the sexual offender program will be managed more effectively and will result in higher outcome measures.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The youth who are sent to the program for treatment will be provided with specific information regarding every aspect of the required treatment protocol and the steps that shall be expected of them to complete the treatment program. The treatment providers and the DJJ employees who will provide assessments and the treatment protocol shall follow the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation no monetary costs will incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgeted monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are sent to the treatment program shall be more effectively and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide a standardized protocol that will produce consistent outcome measures.

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

(a) Initially: $750,300 per annum

(b) On a continuing basis: $750,300 per annum

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for DJJ Mental Health this 2006-2008 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regula-
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire department, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire department, school districts) will be impacted by the regulation? The Department of Juvenile Justice, within the Justice and Public Safety Cabinet, is the only government entity impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, school districts) for the first full year the administrative regulation is in effect. The administrative regulation will establish a written treatment protocol that will be implemneted in the treatment program of juvenile sexual offenders. The anticipated effect will be improved outcome measures in the treatment of juvenile sex offenders.

   (a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for the first year? None

   (b) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire department, or school districts) for subsequent years? None

   (c) How much will it cost to administer this program for the first year? The proposed administrative regulation will not affect the current budget, but will require reallocation of funds and will use existing staff and facilities to implement.

   (d) How much will it cost to administer this program for subsequent years? As the courts deal with juvenile offenders and the number of youth who are committed to the Department of Juvenile Justice for sexual offenses changes, the cost to administer the program in subsequent years may vary. However, at present, the proposed administrative regulation will not affect the current budget, but will require reallocation of funds and will use existing staff and facilities to implement.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
GOVERNOR'S OFFICE OF AGRICULTURAL POLICY
(AMendment)

10 KAR 2:020. Disbursement of monies from the Kentucky Agricultural Development Fund.

STATUTORY AUTHORITY: KRS 248.709(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 248.709(8) authorizes the Kentucky Agricultural Development Board to promulgate administrative regulations relating to the Tobacco Master Settlement Agreement. This administrative regulation provides for the investment of a certain portion of the Agricultural Development Fund by establishing procedures for the submission of proposals to the Agricultural Development Board or to a county agricultural development council for grants from the Agricultural Development Fund.

Section 1. Definitions. (1) "Board" is defined in KRS 248.701(1).
(2) "County council" means a county agricultural development council.
(3) "Fund" is defined in KRS 248.701(2).

Section 2. Application for State Agricultural Development Funds. (1) Applications for agricultural development funds earmarked for state projects shall be submitted to the Kentucky Agricultural Development Board. Upon receipt, the board shall review and consider the applications on a monthly (quarterly) basis using the guidelines established in KRS 248.711.
(a) Proposals submitted by March 1 shall be reviewed during the board's April meeting;
(b) Proposals submitted by June 1 shall be reviewed during the board's July meeting;
(c) Proposals submitted by September 1 shall be reviewed during the board's October meeting; and
(d) Proposals submitted by December 1 shall be reviewed at the board's January meeting.
(2) The board may make final funding determinations or refer applications for further review during each of its monthly (quarterly) meetings. The board may award funds on a disbursement schedule negotiated between the board and the project applicants.

Section 3. Application for County Agricultural Development Funds. (1) Applications for agricultural development funds earmarked for individual counties shall be submitted to the particular county agricultural development council in the same manner in which applications for agricultural development funds earmarked for state projects are submitted to the Kentucky Agricultural Development Board.
(2) County councils may review applications for funds earmarked for individual counties to determine if the application conforms to the priorities established in the particular county council's comprehensive plan as defined in KRS 248.709(5). A county council electing to review an application should prioritize the application then submit the application to the board for review and consideration. County councils shall submit applications to the board no later than the first day of each month in which the board is regularly scheduled monthly meeting following submission of the proposal by a county council.
(3) The board may make final funding determinations or refer applications for further review during each of its monthly meetings.

Section 4. Combined Grants. If a proposed project makes a regional investment appropriate, applicants may simultaneously submit applications for funds to more than one (1) county council, or to a county council or councils and the board. Applications for combined grants shall follow the procedure applicable to each particular county council or to the board. The final determination regarding the project shall be made by the board. Applications for combined grants submitted to the board no later than the first day of each month shall be reviewed by the board at its regularly-scheduled monthly meeting following submission of the proposal.

Section 5. Grant Award. (1) Determinations on project proposals submitted to the board shall be communicated to project applicants within thirty (30) days of the board's determination.
(2) Determinations on county council recommendations submitted to the board shall be communicated to project applicants and the county council or councils involved within thirty (30) days of the board's determination.
(3) Following determination and notification, the board shall require successful applicants to enter into legal agreements deemed necessary by the board in order to ensure proper measures of accountability for use of the public funds held in the Agricultural Development Fund.

Section 6. Reporting. (1) All successful applicants shall be required to provide an annual report on project progress to the board. The first annual report is due twelve (12) months from the date the grant is first issued.
(2) All successful applicants shall be required to provide [quarterly] progress reports to the board. If county funds are involved, successful applicants shall be required to provide [quarterly] progress reports to the relevant county council. [Quarterly reports are due every ninety (90) days from the date the grant is first issued.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Governor's Office of Agricultural Policy, 404 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH L. ROGERS, Executive Director
APPROVED BY AGENCY: November 6, 2006
FILED WITH LRC: November 7, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m., at the Governor's Office of Agricultural Policy 404 Ann Street, Frankfort, Kentucky 40601. Individuals interested in hearing at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If the notification of interest is not received by the date stated above, 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 January 2, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Keith L. Rogers, Executive Director, Governor's Office of Agricultural Policy, 404 Ann Street, Frankfort, Kentucky 40601, phone (502) 564-4627, fax (502) 564-8990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Keith L. Rogers
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amends the quarterly requirements of 10 KAR 2.020.
(b) The necessity of this administrative regulation: This is necessary because the Kentucky Agricultural Development Board meets monthly and considers or refers projects monthly.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This is done pursuant to the authority of KRS 248:703 which gives the Kentucky Agricultural Development Board the ability to make needed technical changes

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will expedite the review and referral process of the Kentucky Agricultural Development Fund as it relates to state funds.

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

(a) How the amendment will change this existing administrative regulation: Change quarterly requirements for KADB review of state projects to monthly rather than quarterly.

(b) The necessity of the amendment to this administrative regulation: Expedites the process for state funds.

(c) How the amendment conforms to the content of the authorizing statutes: Continues to outline the process for state funds.

(d) How the amendment will assist in the effective administration of the statutes: Clarify and expedite the process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect approximately 100 individuals and entities applying for State Agricultural Development Funds annually.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This will provide clarity and flexibility for the Kentucky Agricultural Development Board and the applicants to expedite the process.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Expedites the process of applying for state funds.

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

(a) Initially: $0

(b) On a continuing basis: $0

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: N/A.

(8) State whether or not this administrative regulation establishes a new fee or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? No because this is applicable to all involved under the same terms.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Agricultural Development Board and County Agricultural Development Councils.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: N/A

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: N/A.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET
State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:020. Application forms.

RELATES TO: KRS 322.070, 322.300, 322.420
STATUTORY AUTHORITY: KRS 322.070, 322.090, 322.290, 322.420

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 322 makes it mandatory for the board to prescribe and furnish application forms for registration, and this outlines procedures in connection with filing and processing of such forms.

Section 1. Application Forms. (1) Applicants by any of the four (4) classes of applicants shall be made on the respective forms issued by the board. Applications made on other than the applicable forms will not be accepted for filing by the board. Applicants may attach additional sheets to the form if necessary for other evidence, but such attached sheets shall conform to the same size as the printed forms and shall be securely attached thereto. The board may require clarification or expansion of any of the information on the application in order to evaluate fully applicants' qualifications.

(2) The board requires a transcript showing subjects and grades of all scholastic work after high school only if such education must be evaluated and credited to meet the minimum requirements for license or certificate. It is the duty of the applicant to see that such a record is sent direct from the institution concerned to the board and final action will not be taken by the board until such information is received.

(3) If an applicant fails the same examination three (3) or more times, a new application must be submitted and include evidence satisfactory to the board that the applicant has gained additional knowledge. This evidence may include, but is not limited to:

(a) Examination review course;

(b) College courses; and

(c) Continuing education courses. [An applicant whose original application for licensure has not been obtained may renew his application, supplying additional information to update it for a period of five (5) years after the date of the original. Thereafter, if licensure has not been obtained, the board may require a new application to be submitted with a showing by the applicant of good cause for further consideration.]

B. DAVID COX, Executive Director
APPROVED BY AGENCY: November 3, 2006
FILED WITH LRC: November 15, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 ad-
ministrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonaton Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2660, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

1. Provide a brief summary of:
   a. What this administrative regulation does: This regulation prescribes the application forms and related materials for licensure.
   b. The necessity of this administrative regulation. KRS 322.070 requires applications for licensure be on forms prescribed by the board and contain any other information as the board may require by administrative regulation.
   c. How this administrative regulation conforms to the content of the authorizing statutes: The regulation prescribes the forms necessary for licensure.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation prescribes the forms the board will use in evaluating candidates for examination and licensure.
   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 changes the application procedure and content for those individuals failing a particular exam three or more times. An amendment to KRS 322.090 during the 2006 GA necessitates a change in this regulation.
      b. The necessity of the amendment to this administrative regulation: In order to comply with KRS 322.090.
      c. How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.090 by establishing the additional evidence applicants must supply after failing an exam for the third time.
   f. How the amendment will assist in the effective administration of the statutes: This amendment sets the evidence required for gaining additional knowledge and will be used by the board in evaluating such applications.
   g. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will not affect any businesses, organizations, or state and local governments other than the board itself. It will affect individuals who fail the same exam 3 or more times.
   h. Providing an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      a. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will have to process new applications submitted by the individuals who have failed the same exam 3 or more times.
      b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the individuals to submit a new application. The board can handle the additional workload with no additional resources required.
      c. As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals who have failed the same exam three or more times will be required to obtain additional knowledge through examination review courses, college courses, or continuing education courses. This will improve their chances of passing the examination.
      d. Provide an estimate of how much it will cost to implement this administrative regulation:
         a. Initially: None
         b. On a continuing basis: None

   g. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal funds. No fee increase will result from this amendment.

   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 funding will be necessary.

   i. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.

   j. TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What unites, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Surveyors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.090, 322.290(4)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. None

   a. How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for the first year? None

   b. How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? None

   c. How much will it cost to administer this program for the first year? None

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

   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT CABINET
Board of Nursing (Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161

STATUTORY AUTHORITY: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6) 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314, KRS 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, registration, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

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Section 1. Fees for Licensure or Registration Applications. (1) The board shall collect a fee for:
(a) An application for licensure - $175.
(b) An application for registration - $175.
(c) Licensure renewal or reinstatement - $120.
(d) Licensure by endorsement as a registered nurse - $150.
(e) Licensure by examination as a registered nurse - $110.
(f) Licensure by examination as a licensed practical nurse - $110.
(g) Renewal of license - forty (40) dollars.
(h) Retired status - twenty-five (25) dollars.
(i) Reinstatement of license - $120.
(j) Paper copy of a renewal application - forty (40) dollars;
(k) Full verification of licensure, credential or registration history - fifty (50) dollars.
(l) Duplicate license or registration card or letter - thirty-five (35) dollars.
(m) Registration as an advanced registered nurse practitioner - $150.
(n) Renewal of registration as an advanced registered nurse practitioner - forty (40) dollars.
(o) Reinstatement of registration as an advanced registered nurse practitioner - $120.
(p) Name change - thirty-five (35) dollars.
(q) Application to establish a prelicensure program of nursing - $2,000.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:
(1) Initial provider approval - $400.
(2) Reinstatement of provider approval - $400.
(3) Renewal of approval - $200.
(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:
(a) The current examination fee required by the national council of state boards of nursing; and
(b) Application for licensure fee pursuant to Section 1 of this administrative regulation.
(c) A graduate of a foreign school of nursing shall be responsible for:
(d) Costs incurred to submit credentials translated into English;
(e) Immig ration documents; and
(f) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:
(1) For an application for licensure by endorsement, within six months from the date the application form is filed with the board office; and
(2) For an application for licensure by examination, within one year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, credential or registration shall be issued the appropriate approval, license, credential or registration without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be $120.
(2) The renewal fee shall be thirty-five (35) dollars.
(3) The reactivation fee shall be $120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be processed until the correct fee is received.

Section 8. Bad Check Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee. A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a returned check fee of thirty-five (35) dollars.

SUSAN DAVIS, President
APPROVED BY AGENCY: October 19, 2006
FILED WITH LRC: November 5, 2006 at 4 a.m.
PUBLISHED IN THE PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on December 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 the agency in writing by December 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 regulations. Written comments shall be accepted until close of business January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40205, 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 sets fees for applications and services.
(b) The necessity of this administrative regulation: KRS Chapter 314 requires the board to set fees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting fees.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It changes the bad check fee to a bad transaction fee to include electronic transactions. The fee remains the same.
(b) The necessity of the amendment to this administrative regulation: The board accepts electronic transactions in payment for renewal fees.
(c) How the amendment conforms to the content of the authorizing statutes: By recognizing alternative payment methods.
(d) How the amendment will assist in the effective administration of the statutes: By updating the bad check fee to more accu-
rately reflect new payment methods.

(3) List the type and number of individuals, businesses, organiz-
izations, or state and local governments affected by this adminis-
tative regulation: All nurses, approximately 65,000.

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

(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this adminis-
trative regulation or amendment: They will be required to pay a bad trans-
action fee if they make a bad electronic payment.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): The amount of the fee remains the same.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): There are no benefits since this is a fee for a bad transaction.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(c) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if new, or by the change if it is an amendment: No increase
will be necessary.

(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: The fee
is already established and the amount is not being changed.

(9) TIERING: Is tiering applied? Tiering was not applied as the
changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? The board of nurs-
ing.

3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulation. HB102 2006 GA.

4. Estimate the affect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, coun-
ties, fire departments, or school districts) for the first year? No additional
revenue as a result of the amendment.

(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, coun-
ties, fire departments, or school districts) for subsequent years? No
additional revenue as a result of the amendment.

(c) How much will it cost to administer this program for the first
year? No additional cost.

(d) How much will it cost to administer this program for subse-
quent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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hunners reach a quota of 6,700 Canada geese in the Ballard Reporting Area before January 31, dark goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 2,600 Canada geese in the Henderson Union Reporting Area before January 31, dark goose hunting shall cease in the Henderson-Union Reporting Area.

(3) If the quotas are reached for both the Ballard and Henderson Union reporting areas, dark goose hunting shall cease in the western goose zone:

(a) Seven (7) days after the reporting area closes; or
(b) On the scheduled closing date, whichever occurs first.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure.

Section 6. Permit for Conservation Snow Goose Order. (1) A person hunting snow geese during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10. Approved by the Fish and Wildlife Commission August 19, 2005.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: November 1, 2006 at 3 p.m.

PUBLICATION AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held December 21, 2006 at 9 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 the 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 January 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9135.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes 2006-07 waterfowl season dates and bag limits according to federal frameworks set by the U.S. Fish and Wildlife Service (USFWS). Most changes are the result of calendar shift. Other amendments were limited to changes on wildlife management areas.

(b) The necessity of the administrative regulation. The necessity of this administrative regulation is to establish the 2006-07 early migratory bird seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute. KRS 150.025(1) and 150.600(1) authorizes the department to establish waterfowl hunting season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes. By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation. This is an amendment to an existing regulation. Each
fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for migratory bird game bird hunting under guidance of the Migratory Bird Treaty Act. Other amendments were limited to changes on wildlife management areas.

(c) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(d) How does the amendment conform to the authorizing statutes. The amendment establishes season dates as provided in KRS 150.025(1) and 150.600(1).

(e) How the amendment will assist in the effective administration of the statutes: See "D" above.

(f) The type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (f) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and bag limits in the hunting guide will be updated by the USFWS. Hunters will have to review the hunting guide for updated information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (f)? There will be no additional costs to those identified in question (f).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (f)? This administrative regulation is based upon current scientific knowledge of species ecology, and complying with the regulations herein will permit continued opportunity to hunt migratory game birds.

(h) 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.

(i) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the state Game and Fish Fund.

(j) Determination of whether an 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.

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

TIERING: Is tiering applied? No. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

OTHER EXPLANATION:

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the USFWS and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing dates, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after the open season.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional, and/or state stocks of birds important to Kentucky's migratory bird hunters.
statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas. KRS 150.340 authorizes the department to establish bag and creel limits for waterfowl. This administrative regulation establishes waterfowl seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbrook Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:
(a) A concealing enclosure;
(b) A pt; or
(c) A boat.
(2) "Party" means:
(a) A person hunting alone; or
(b) From two (2) to four (4) persons who share a blind.
(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.
(4) "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.
(5) "Statewide waterfowl season" means the provisions of this administrative regulation and of 301 KAR 2.221.
(6) "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing shot:
(a) Made of lead,
(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2.224:
(1) A waterfowl hunter shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind;
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line, and
(c) Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:
(a) A waterfowl hunter shall not establish or hunt from:
1. A permanent blind; or
2. A blind within 200 yards of:
   a. Another blind; or
   b. A waterfowl refuge;
(b) A person shall not hunt in a designated recreation area or access point;
(c) More than four (4) persons shall not occupy a blind; and
(d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a midday hunt may leave decoys in place for the duration of his hunt.
(2) A person wishing to establish or use a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, or Sloughs Wildlife Management Areas:
(a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the department;
(b) May designate one (1) other person as a partner;
(c) Shall not hold more than one (1) permit per area; and
(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Sloughs Wildlife Manage-

ment Areas:
1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
2. Shall be eighteen (18) years of age or older.
3. The holder of a blind permit shall:
(a) Construct or establish his blind before November 20 or forfeit the permit;
(b) Not lack a blind; and
(c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days of the close of the regular waterfowl season or be ineligible for a permit the following year.
4. A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.
5. A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area:
(1)(d) Statewide waterfowl seasons shall apply unless otherwise stated in this section.
(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.
(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.
(2) A person shall:
(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;
(b) Enter an area or a portion of an area marked by signs as closed to public access; or
(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.
(3) Wildlife management areas in Ballard County.
(a) Sliding limit scale.
1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and
2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2).
(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.
(c) At Ballard Wildlife Management Area:
1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.
2. The duck, coot, and merganser season shall be:
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
3. The goose season shall be:
   a. December 5 [7] through January 31 [29]
   b. Until the Ballard Reporting Area Canada Goose quota is reached.
4. Youth waterfowl season shall be the first weekend in February.
5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.
6. A waterfowl hunter shall:
   a. Apply in advance in accordance with Section 6 of this administrative regulation;
   b. Case his gun while using department-supplied transportation to and from a blind;
   c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15, and
   d. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department [Not hunt after 12 noon].
(d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
1. A person shall:
   a. Not hunt on a Monday, Tuesday, Christmas Day or New
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Year's Day;

b. Check in daily at the designated check station by 8 a.m. during duck and Canada Goose season; and
c. Check out after 8 a.m. by depositing a card at a department designated drop point.

2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.

3. A department blind will be assigned through a daily draw [assignment shall be made in accordance with Section 5 of the administrative regulation].

4. A blind shall be [made] offered to another hunter on a first-come, first-served basis, if the blind has not been assigned during the draw that day [original answer has not checked-in by 6 a.m.].

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

6. Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of designated points as marked by the department.

7. Boat blinds shall not be permitted in flooded timber, except during periods of flood where no other access is possible. When boat blinds are permitted, there shall be a 200 yard distance between boat blinds.

8. On the Olmsdell and Peal Units [unit], a person shall not:
   a. Hunt waterfowl except from a permanent department blind or within twenty-five (25) feet of department blinds if the area is under full and only accessible by boat; and
   b. Hunt waterfowl except from a blind location assigned by the department during Canada Goose season.

9. On the Peal unit:
   a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake; and
   b. More than four (4) parties shall not hunt at the same time on Fish Lake;
   c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than Canada Goose except from a blind assigned by the department and unless:
    a. The season for these species is open, and
    b. The season for Canada Goose is also open.

   (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
   (b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:
      1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linburnton.
      2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
   (c) The following refuge areas are closed to the public:
      1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and the TVA power transmission lines at river mile 55.5 [673 (Crooked Creek Light)];
      2. Not including the row of islands on the west side of the main river channel; and
      3. Not including Taylor Bay and Lake Fork Bay.
   (d) From November 1 through March 15 within Hunker Bay and Fulton Bay as marked by buoys and signs.

12. From October 15 through March 15, a person shall not hunt:
   1. Within 200 yards of; or
   2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

   (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
   (b) A waterfowl hunter:
      1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and
      2. Shall not use a breech-loading firearm elsewhere on the area

14. Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.


16. Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
   (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
   (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.
   (c) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
      (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
   (b) Shall not use a breech-loading firearm elsewhere on the area.

17. Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
   (a) Within the no wake zone at the dam site marina;
   (b) From the shore of Camp Webb;
   (c) From the shore of the state park;
   (d) On Deer Creek Fork; and
   (e) Within three-quarters (3/4) of a mile from the dam.

18. Green River Lake Wildlife Management Area.
   (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
   (b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

19. Kaylor Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

20. Land Between the Lakes.
   (a) The following portions shall be closed to the public from November 1 through March 15:
      1. Long Creek Pond;
      2. The eastern one-third (1/3) of Smith Bay; and
      3. The eastern two-thirds (2/3) of Duncan Bay.

21. Shooting Permit when hunting waterfowl:
   1. Island from the water's edge of Kentucky Lake or Barkley Lake, or
   2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

22. A person shall not hunt waterfowl on inland areas during a quota deer hunt.

23. A person shall establish or use a permanent blind:
   1. On an inland area; or
   2. Along the Kentucky Lake shoreline of Land Between the Lakes.

24. A waterfowl hunter shall remove decoys and personal effects daily.

25. Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

26. Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

27. Ohio River Waterfowl Refuge.
   (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.
   (b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

   (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
   (b) The following portions, as posted by signs, are closed to the public from October 15 through March 15.
1. (Gibraltar Mine, as bounded by Roekoen Road, the Western Kentucky Park Road, Pond Creek Road, and the P&H Haul Road; 2.) Sinclair Mine, as bounded by Hwy 176 [railroad tracks], the haul road, and Goose Lake Road as posted by signs; and 2. [3.] Homestead, as bounded by Coal Springs Wyo Road, H2 Road, H1 Road, and H6 Road, and area posted by signs [the haul road and the Green River].

(18) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(19) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On the Grassly Pond Powell's Lake Unit, a waterfowl hunter: 1. Shall use a permanent blind provided by the department.

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(d) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise.

3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and

4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2); and

5. Shall be accompanied by an adult if under eighteen (18) years of age;

6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(20) South Shore Wildlife Management Area.

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by preseason draw. Applicants shall mail a three (3) by five (5) white index card in an envelope to Grayson Lake WMA post marked between November 1 and November 15.

(21) Starfire Wildlife Management Area shall be closed to waterfowl hunting.

(22) Taylorsville Lake Wildlife Management Area. The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for quota deer hunting, and the waters from the boat ramp to the Highway 248 bridge, which are open to fishing until November 15 [and the entire area is open for quota deer hunting].

(23) Westvaco Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.

(24) A person shall obtain a Westvaco Permit before hunting.

(25) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.

(26) Yatseville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatseville Lake, and Yatseville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch, are [closed] to all waterfowl hunting.

(27) [66] Yellowbird Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard-[Bealwight] or [the] Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling (877) 598-2401;

(b) Register between September 1 and September 30, and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for the following year's waterfowl quota hunts if the hunter violates state or federal regulations while waterfowl hunting on WMAs in which hunters numbers are regulated as part of a preseason or daily drawing.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) Greentoe State Park.

(a) There shall be an open waterfowl hunt December 13 through January 15 on selected portions of Greentoe Lake and adjacent shoreline.

(b) Hunters shall check in each day at the front desk of the Greentoe State Park or a designated check-in location on days in which the park office is not open.

(c) During check-in hunts shall be provided a map showing portions of the lake that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the Greentoe State Park or a designated check-out location on days in which the park office is not open.

(e) Statewide waterfowl hunting requirements apply.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.

(3) Youth shall register in advance and carry postcard notification the day of the hunt.

(4) Youths shall be accompanied by an adult eighteen (18) years or older.

(5) One (1) youth shall not be accompanied by more than one (1) adult.

(6) One (1) adult may accompany two (2) youths.

(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.

(8) Four (4) hunters shall be permitted per blind.

(9) Hunters may only discharge firearms from the blind.

(10) Hunters may only have fifteen (15) shotshells per hunter.

(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.

(12) Firearm shall be encased when traveling to and from the
blind.

(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

(14) All decoys and equipment shall be removed at the end of each day's hunting.

(15) Hunters shall report harvest by dropping hunt permit at designated location.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary

APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: November 1, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held December 21, 2006 at 9 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 January 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3430, fax (502) 564-9136.

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 2006-07 waterfowl season dates and bag limits according to Federal Frameworks set by the U.S. Fish and Wildlife Service (USFWS). Most changes are the result of a calendar shift. Other amendments were changes on wildlife management areas which facilitate meeting state waterfowl management objectives.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2006-07 waterfowl hunting season in accordance with the USFWS and such seasons provide opportunities on public lands that are consistent with meeting Kentucky’s waterfowl management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl hunting season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each failure the USFWS issues a federal mandate establishing the frameworks for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for migratory game bird hunting under the guidance of the Migratory Bird Treaty Act. Other amendments were limited to changes on wildlife management areas that facilitate providing hunting opportunity consistent with statewide management objectives.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: The amendment establishes season dates as provided in KRS 150.025(1) and 150.600(1).

(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 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the hunting guide. Hunters will have to review the hunting guide for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is based upon current scientific knowledge of species ecology, and complying with the regulations herein will permit continued opportunity to hunt migratory game birds.

(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 source of funding is the State Game and Fish Fund.

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

(9) TIERING: Is being applied? No, tiering is not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts) Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. There will be no increase or decrease in expenditures or revenues to the Kentucky Department of Fish and Wildlife Resources as a result of the amendment to this administrative regulation.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate: 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky’s migratory bird hunters.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:223. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.255, 150.240, 150.305, 150.330, 150.340, 150.390, 150.600, 15.603, 150.630, 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: 50 C.F.R. Parts 20 and 21 establish Canada goose quota and require the state to close goose hunting season if these quotas are reached. KRS 150.025(1) and 150.600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner.

Section 1. Definition. [Definitions] (H) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

Section 2. A person goose hunting in the Northeast Special
Hunt Zone, as defined in 301 KAR 2:224 shall:
(1) Carry a permit to hunt Canada Geese on special areas form.
(2) Complete and return the harvest survey portion of the permit within ten (10) days after the season closes.
(3) Not be eligible for permits the following year if they do not return harvest surveys within ten (10) days after the season closes.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference.
(a) Kentucky Permit to Hunt Canada Geese on Special Areas, August, 1985, is incorporated by reference.
(b) Noncommercial Migratory Goose Hunting Permit, August, 1986.
(c) Daily Waterfowl Harvest Report, August, 1986.
(d) Application for Commercial Waterfowl Hunting Area Permit, August, 1986.
(e) Assignment of Waterfowl Hunting Rights, August, 1986.

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 Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASETTE, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: November 3, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held December 21, 2006 at 9 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 January 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3340, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What the administrative regulation does: This regulation removes Canada goose reporting requirements in the Western Goose Zone as approved by the Mississippi Flyway Council and the U.S. Fish and Wildlife Service.
(b) The necessity of the administrative regulation: This administrative regulation establishes reporting requirements for waterfowl hunters in specific regions of the state. These requirements are no longer necessary to monitor the harvest of Mississippi Valley Population of Canada geese because of long-term change in migration chronology. This change remains consistent with long-term management efforts for regional populations.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl hunting requirements in accordance with maintaining season dates and limits.
(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment will remove reporting requirements for the goose hunters in the Western Goose Zone.
(b) The necessity of the amendment to this administrative regulation: The necessity of this regulation is to remove harvest reporting requirements for Canada goose hunters in the Western Goose Zone because they are no longer deemed necessary due to changes in migration and population makeup.
(c) How does the amendment conform to the authorizing statutes: The amendment establishes waterfowl harvest reporting requirements as provided in KRS 150.025(1) and 150 600(1).
(d) How the amendment will assist in the effective administration of the statutes: See (a) above.
(3) List the type and number of individuals, businesses, organizations, and state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now of by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The changes in requirements will be published in the annual waterfowl hunting guide. Hunters will have to review this guide for the updated information to hunt legally during the specified season.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to those identified in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is based upon current scientific knowledge of species ecology, and complying with the regulations herein will permit continued opportunity to hunt migratory game birds.
(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 source of funding is the state Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment. 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: This administrative regulation does not directly or indirectly establish or increase any fees.
(9) TIERING: Is tiering applied? No. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources is the division of state government that will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative
regulation. KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures of revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no increase or decrease in expenditures or revenues to the Kentucky Department of Fish and Wildlife Resources as a result of the amendment to this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year? This administrative regulation will not generate any revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory bird seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: Earliest opening and latest closing date, maximum number of days a species(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

KENTUCKY STATE NATURE PRESERVES COMMISSION

(Amendment)


RELATES TO: KRS 146.485, 146.610, 50 C.F.R. 17.12, 23.23
STATUTORY AUTHORITY: KRS 146.485, 146.610
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610 authorizes the Kentucky State Nature Preserves Commission to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes guidelines for identifying and designating threatened and endangered plants to accomplish these provisions.

Section 1. Plant species native to Kentucky which are listed as endangered or threatened on the "United States List of Endangered and Threatened Plants", as established in 50 C.F.R. 17.12, shall be considered endangered or threatened pursuant to this chapter.

Section 2. Plant species native to Kentucky which are listed in the "Species listed in Appendices I, II, and III" to the Convention on International Trade in Endangered Species of Wild Fauna and Flora at 50 C.F.R. 23.23, as codified in the Code of Federal Regulations October 1, 2003 [2000], may be considered endangered or threatened pursuant to this chapter.

Section 3. The commission may identify and designate additional plant species as endangered or threatened and change or remove these designations as more information becomes available. The commission may also develop other lists for public education purposes such as plants of special concern. In addition to the factors established in KRS 146.6102(a), the commission shall utilize the following criteria in its identification and designation of these additional species:

1. Only species that have been described and named in a refereed professional scientific journal and widely accepted among professional botanists shall be considered;

2. Hybrids shall not be listed unless they are known to be naturally reproducing; and

3. Only plant species native to Kentucky shall be considered.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The published list of federally-listed plants found at 50 C.F.R. 17.12, as published in the Code of Federal Regulations, October 1, 2002 [2000]; and

(b) The "Species listed in Appendices I, II, and III" found at 50 C.F.R. 23.23, as published in the Code of Federal Regulations, October 1, 2003 [2000].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Nature Preserves Commission, 801 Schenkell Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DONALD S. DOTT, Jr., Executive Director
APPROVED BY AGENCY; November 9, 2006
FILED WITH LHC: November 9, 2006 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10:30 a.m. Eastern Standard Time at the Kentucky State Nature Preserves Commission, 801 Schenkell Lane, Frankfort, Kentucky 40601-1403. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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. 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 January 2, 2007.

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: Donald S. Dott, Jr., Executive Director, Kentucky State Nature Preserves Commission, 801 Schenkell Lane, Frankfort, Kentucky 40601-1403, phone (502) 573-2886, fax (502) 573-2355.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donald S. Dott, Jr.

(1) Provide a brief summary of:
(a) What this administrative regulation does. Substitutes new current references of the C.F.R. in place of outdated ones. These references set forth the current C.F.R. lists of endangered and threatened plant species in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The citizens of the Commonwealth need to know which plants are currently considered endangered and threatened, and the list that has been in the regulations is outdated.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.610 authorizes the Kentucky State Nature Preserves Commission to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes guidelines for identifying and designating threatened and endangered plants to accomplish these provisions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all citizens of and visitors to the Commonwealth of the plant species that are currently designated threatened or endangered, which is in conformity with the express intent of KRS 146.610.
(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 replaces an outdated C.F.R. reference to listings of endangered and threatened plant species with a current one.
(b) The necessity of the amendment to this administrative regulation: It is necessary to update the list of endangered and threatened plant species in order to reflect the changes in plant populations, and so that citizens of and visitors to the Commonwealth are correctly informed.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 146.600 provides that it is the policy of the Commonwealth to recognize endangered and threatened species of plants and to ensure their perpetuation as viable components of their ecosystems. KRS 146.610(2)(b) authorizes the Commission to promulgate administrative regulations that identify species the Commission determines to be endangered or threatened, and requires the Commission to update the lists at least every 4 years. The last time these lists were updated was 2002.
(d) How the amendment will assist in the effective administration of the statutes: KRS 146.610(2)(b) authorizes the Commission to promote administrative regulations that identify species the Commission determines to be endangered or threatened, and requires the Commission to update the lists at least every 4 years. The lists include federally-listed plants that appear in the C.F.R. The last time these lists were updated was 2002.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All citizens of and visitors to the Commonwealth will be affected by this administrative regulation.
(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals, homeowners, businesses, organizations and state and local governments will not be impacted by this amendment. KRS 146.615 provides that the lists of endangered and threatened species shall not impede the development or use of public or private lands.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None
(5) Provide an estimate of how much it will cost to implement this administrative regulation:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts): Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Not applicable
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: Not applicable
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable
(c) How much will it cost to administer this program for the first year? Not applicable
(d) How much will it cost to administer this program for subsequent years? Not applicable
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

KENTUCKY STATE NATURE PRESERVES COMMISSION
(Amendment)

400 KAR 3:040. Endangered and threatened plant lists.

RELATES TO: KRS 146.485, 146.610
STATUTORY AUTHORITY: KRS 148.485, 146.610
NECESSITY: FUNCTION, AND CONFORMITY: KRS 146.610 authorizes the Kentucky State Nature Preserves Commission to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes the lists of threatened and endangered plant species.

Section 1. Endangered Lists. The following plant species based on the factors in KRS 146.610(2)(a) and 400 KAR 3:020, Section 3, shall be considered endangered in the Commonwealth of Kentucky:

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer spicatum</td>
<td>Mountain maple</td>
</tr>
<tr>
<td>Athyrium hymenoides</td>
<td>Climbing fern</td>
</tr>
<tr>
<td>Aquilaria australis</td>
<td>Earleaf akebaris</td>
</tr>
<tr>
<td>Aquilaria obtusifolia</td>
<td>Ten-lobe akebaris</td>
</tr>
<tr>
<td>Aquilaria skinnerana</td>
<td>Pink false frowertow</td>
</tr>
<tr>
<td>Arum tabernamenta var</td>
<td>Eastern blue-star</td>
</tr>
<tr>
<td>Arthropurpurea</td>
<td>Great angeliac</td>
</tr>
<tr>
<td>Angelita incana</td>
<td>Filmy angeliac</td>
</tr>
<tr>
<td>Arya pinnata</td>
<td>Pink's potato-bean</td>
</tr>
<tr>
<td>Arizanacanthus</td>
<td>Wild Sarcandia</td>
</tr>
<tr>
<td>Boosucke vulgaris</td>
<td>American bugleweed</td>
</tr>
<tr>
<td>Boosucke edwardsii</td>
<td>River bugleweed</td>
</tr>
<tr>
<td>Botrychium matricarioides</td>
<td>Matricary grapefern</td>
</tr>
<tr>
<td>Calamagrostis portensis var</td>
<td>Reed bent grass</td>
</tr>
<tr>
<td>Calamagrostis</td>
<td>Cumberland sedgegrass</td>
</tr>
<tr>
<td>Calopogon tuberosus</td>
<td>Grasspink</td>
</tr>
<tr>
<td>Carex australis</td>
<td>Summer sedge</td>
</tr>
<tr>
<td>Carex atlanticus var</td>
<td>Prickly pond sedge</td>
</tr>
<tr>
<td>Carex loomis</td>
<td>Cypress-sedge sedge</td>
</tr>
<tr>
<td>Carex juniperum</td>
<td>Cedar sedge</td>
</tr>
<tr>
<td>Carex leponticola</td>
<td>Finely-nerved sedge</td>
</tr>
<tr>
<td>Carex reniformis</td>
<td>Round form sedge</td>
</tr>
<tr>
<td>Carex rossanae</td>
<td>Round mountain sedge</td>
</tr>
<tr>
<td>Carex teucrium</td>
<td>Broad sedge</td>
</tr>
<tr>
<td>Castanea laevigata</td>
<td>American chestnut</td>
</tr>
<tr>
<td>Castellana coccinea</td>
<td>Scarlet Indian paintbrush</td>
</tr>
<tr>
<td>Chaenomeles foetida</td>
<td>Feets' lip fern</td>
</tr>
<tr>
<td>Chelone obliqua var</td>
<td>Red turtlehead</td>
</tr>
<tr>
<td>Chrysochoera virginiana</td>
<td>Green-and-cold</td>
</tr>
<tr>
<td>Collinsia virginiana</td>
<td>Whorled horse-balm</td>
</tr>
<tr>
<td>Conopoma perennis</td>
<td>Sweet fern</td>
</tr>
<tr>
<td>Conradina virginiana</td>
<td>Cumberland Rosemary</td>
</tr>
<tr>
<td>Convolvula montana</td>
<td>American lily-of-the-valley</td>
</tr>
<tr>
<td>Coralorrhiza maculata</td>
<td>Spotted Coralroot</td>
</tr>
<tr>
<td>Cymopterus fraseri</td>
<td>Fraser's sedge</td>
</tr>
<tr>
<td>Cryptum chamaedrum</td>
<td>Small white lady's-slipper</td>
</tr>
<tr>
<td>Cryptum tennesseae</td>
<td>Tennessee lady's-slipper</td>
</tr>
<tr>
<td>Deschampsia cespitosa</td>
<td>Tufted hair grass</td>
</tr>
<tr>
<td>Dracaena draco</td>
<td>Wadge-leaved thistle</td>
</tr>
<tr>
<td>Drosera brevifolia</td>
<td>Dwarf sundew</td>
</tr>
<tr>
<td>Drosera intermedia</td>
<td>Spoon-leaved sundew</td>
</tr>
<tr>
<td>Echiadus paniculatus</td>
<td>Dwarf turfhead</td>
</tr>
<tr>
<td>Enophorum virginicum</td>
<td>Tawnys-cotton grass</td>
</tr>
<tr>
<td>Eryngium integrifolium</td>
<td>Blue flower cyme-thistle</td>
</tr>
<tr>
<td>Eupatorium semperanum</td>
<td>Small-flowered thoroughwort</td>
</tr>
<tr>
<td>Eurybia hemisphaerica</td>
<td>Southern prairie aster</td>
</tr>
<tr>
<td>Eurybia radula</td>
<td>Low rough aster</td>
</tr>
<tr>
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<td>MOSSES</td>
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<td>Tortula norvegica</td>
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Section 2. Threatened Lists. The following plant species, based on the factors in KRS 146-640(3)(a) and the criteria listed in 400 KAR 3.020, Section 3, shall be considered threatened in the Commonwealth of Kentucky:
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<th>Common Name</th>
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<td>Pontederia cordata</td>
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<td>Prenanthus crenulata</td>
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<td>Mock bishop's-weed</td>
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<td>Quercus nigra</td>
<td>Water oak</td>
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<td>Quercus texana</td>
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<td>Sagina fontinalis</td>
<td>Water stitchwort</td>
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**Mosses**

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<td>Neckera penata</td>
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Schizachne purpurascens  Purple nut
Soutulaea exaltata  Hook skullcap
Sedum telephium  Allohyo-clonecor
Silene ovela  Ovate catchfly
Silphium laciniatum var. rosenowii  Compassplant
Solidago alpina  White-haired goldenrod
Solidago cutata  Curly goldenrod
Solidago roaneense  Roan mountain goldenrod
Spartina virginica  Virginia sea-grass
Spartina patens  Shining salt-marsh grass
Spartina maritima var. pandurata  Quaking salt-marsh grass
Sporobolus clandestinus  Desert dropseed
Stellaria fontinalis  Water stitchwort
Talinum ternatum  Roundhead fleshyflower
Tulipa canadensis  Canadian tulip
Theaeeum pumilum  Cutleaf meadow-rue
Thuja occidentalis  Northern white-cedar
Tropaeolum album  Tropaeolum
Trifolium stoloniferum  Running buffalo clover
Trifolium undulatum  Painted clover
Vitex agnus-castus  Mastic tree
Viola serpyllifolia  Field violet
Vitis riparia  Blue grape
Ziziphus mucronata  Southern wild-nutt

DONALD S. DOTT JR., Executive Director
APPROVED BY AGENCY: November 9, 2006
FILED WITH LRC: November 9, 2006 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10:30 a.m. Eastern Time at the Kentucky State Nature Preserves Commission, 801 Schenkel Lane, Frankfort, Kentucky 40601-1403 Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. 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 January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contacts person.

CONTACT PERSON: Donald S. Dott, Jr., Executive Director, Kentucky State Nature Preserves Commission, 801 Schenkel Lane, Frankfort, Kentucky 40601-1403, phone (502) 573-2886, fax (502) 573-2355.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donald S. Dott, Jr.

(1) Provide a brief summary of:
(a) What this administrative regulation does; Substitutes new, current references of the C.F.R. in place of outdated ones. These references set forth the current C.F.R. lists of endangered and threatened plant species in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The need to change the names in the regulations.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 146.610 authorizes the Kentucky State Nature Preserves Commission to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes guidelines for identifying and designating threatened and endangered plant species to accomplish these provisions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This adminis-
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401 KAR 8:040. Laboratory certification.

RELATES TO: KRS 224.10-100, 224.10-110 [Chapter-224], 40 C.F.R. 141.28


NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224.10-110 directs the cabinet to enforce the statutes and administrative regulations adopted by the Secretary for the regulation and control of the purification of water for public and semipublic use. [The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility.] This administrative regulation provides procedures whereby commercial or water system laboratories may be certified to test for various contaminant groups or constituents within a contaminant group.

Section 1. Laboratory Certification. The U.S. Environmental Protection Agency or the cabinet may certify all public water systems or commercial laboratories performing analyses for public water systems. The cabinet may choose to contract with a third party to evaluate laboratories and make recommendations to the cabinet for certification. Certification may be for one (1) or more contaminant groups or for a single constituent within a contaminant group. Each contaminant group requires a different certification, but different certifications may be accomplished during one (1) inspection.

Section 2. Application. (1) Laboratories which desire certification shall submit a written request for the certification to the cabinet. The request shall include:

(a) A statement of the contaminant group for which certification is requested; and
(b) The annual fee specified in 401 KAR 8:050 for the contaminant group for which certification is requested.

The cabinet may request other information necessary to furnish the cabinet with the data needed to determine suitability for certification.


Section 4. Performance Evaluations. For laboratories certified, or for those laboratories seeking certification to conduct chemical or bacteriological analyses, performance evaluations shall be performed.

Section 5. The cabinet shall certify [Certification of laboratories are performed by the cabinet for all public water system laboratories or commercial laboratories performing analyses for public water systems. All analyses required by 401 KAR 8:010 through 8:700, inclusive, shall be performed in a certified laboratory and shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency (USEPA) or by the cabinet. Certifications shall be performed on an annual basis with fees payable as set forth in 401 KAR 8:050.]

Section 6. Public Water System Laboratories. Public water systems may establish their own laboratories. These laboratories shall be properly certified and shall maintain annual certification. Failure to achieve or maintain annual certification shall not relieve the public water system of the responsibility for reporting results of the required analyses from a certified laboratory.

Section 7. Requirements. Maintenance of certification shall be dependent on the following factors:

(1) Analyses. A certified laboratory shall perform an analysis for a contaminant group or constituent in accordance with the appropriate approved method. Approved methods for drinking water are found in "U.S. Environmental Protection Agency Drinking Water Methods" (40 C.F.R. 141.23 subpart K, 11 March 2003, and 141.24 subpart e, October 29, 2002), incorporated by reference in Section 11 of this administrative regulation.

(2) Submittal of routine results. Except as provided in subsection (5) of this section, results of analyses performed in certified laboratories by any other water systems in Kentucky shall be submitted to the cabinet by the tenth of the month following the specified testing period for which the samples were taken and shall be submitted to the public water system as soon as possible. The public water system shall be [be] responsible for this reporting requirement.

(3) [42] Performance evaluation. Performance evaluation (PE) samples shall be analyzed and the results submitted to the cabinet at the cabinet's request, not to exceed twice a year, unless the cabinet has reason to believe that quality assurance at a lab may be questionable.

(4) [39] Deviations. Any deviation from accepted practice, listed on a report resulting from an on-site inspection, shall be corrected. A written explanation of the deviation and steps taken to correct it shall be submitted to the cabinet within thirty (30) days of the issuance of the inspection report.

(5) [44] Violations. The laboratory shall report any violation of maximum contaminant levels or other violation of tier one violations, as defined in 401 KAR 8:070, to the public water system and the cabinet within twenty-four (24) hours of sample analysis. The public water system shall begin check sampling within twenty-four (24) hours of notification of the violation.


[46] Minimum microbiological requirements. Laboratories certi-
Section 8. Right of Entry. The certified lab shall permit the cabinet to conduct on-site surveys during normal business hours, without prior notification.

Section 9. Revocation of certification and downgrading of certification shall be in accordance with the procedures set forth in the "Manual for the Certification of Laboratories Analyzing Drinking Water Criteria and Procedures Quality Assurance; Fifth Edition, January 2005" incorporated by reference in Section 11 of this administrative regulation. Laboratories which have been notified of a change of certification shall, within seventy-two (72) hours, notify public water systems which the laboratory serves of the change in certification status and any impact that change could have on the public water system. Laboratories may, with permission of the cabinet, and after notice to the public water system, fulfill their obligations to public water systems to provide monitoring reports by contracting with a certified laboratory.

Section 10. Recognition of Out-of-state Laboratories. The cabinet may recognize laboratories outside of Kentucky upon submission of proof of Environmental Protection Agency certification, certification by a state having primary enforcement responsibility for the provisions of the Safe Drinking Water Act, or such other proof that will satisfy the cabinet that a laboratory has been certified pursuant to the Safe Drinking Water Act requirements [as the cabinet may require]. Any Kentucky water system may enter into a contract with a certified out-of-state laboratory, if reporting time intervals and capabilities are maintained. If on-site inspection is necessary for certification of out-of-state laboratories, the laboratories shall bear the cost.

Section 11. Incorporation by Reference (1) [All analyses required by 401-KAR 8 010 through 8 700, inclusive, shall be performed in a certified laboratory and shall be in accordance with methods approved for drinking water by the United States Environmental Protection Agency (U.S. EPA) or by the cabinet. The following documents are incorporated by reference, and are available for inspection and copying subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601.

(a) Standards Methods—For the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed, and may be obtained by contacting the Publication Office, American Public Health Association, 1416-16th Street NW, Washington, D.C. 20005.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky. Monday through Friday, 8 a.m. to 4:30 p.m. (This publication may be obtained through the division.)

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006.

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(c) The necessity of the amendment to this administrative regulation: The updated EPA manual makes the previous edition obsolete.

(d) How the amendment conforms to the content of the authorizing statutes: The amendment does conform to the content of the authorizing statutes.

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Public Water Systems which have their own certified laboratory will have to obtain a copy of the revised EPA Laboratory Certification Program and adhere to the method modifications as presented in the document.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost for the revised EPA document ("Manual for the Certification of Laboratory Analyzing Drinking Water, Criteria and Procedures Quality Assurance; Fifth Edition, January 2005", Publication EPA 615-R-05-004, U.S. EPA, Office of Drinking Water, Washington, D.C.). In order to meet the new EPA requirements certified laboratories may have to modify their testing methods, which may have initial costs associated with equipment, chemicals, or consumables.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? EPA has revised their Laboratory Certification Program with the newly released document. In order to remain certified for the testing and analysis of drinking water, laboratories must comply with EPA's program.

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

(a) Initially: There should be no appreciable initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There will be no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation; it merely updates the current regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is necessary so that Kentucky can continue to maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of various federal regulations in 40 C.F.R. Part 141, and to maintain a comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. There is no specific federal regulation on laboratory certification. This amended regulation will assist Kentucky in utilizing laboratory results of the highest quality to meet the federal regulations in 40 C.F.R. Part 141.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no specific federal regulation on laboratory certification, but where there are federal requirements about certified laboratoried and federally approved methods, this proposed amended regulation is the same.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public water systems with certified laboratoried are impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 40 C.F.R. 141.28, & 42 U.S.C. Chapter 6A Subchapter XII.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation amendment does not increase revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation amendment does not increase revenue for state or local governments.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:070. Public notification.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.40, Part 141 Subpart Q Appendix A, 141.201-141.210, 143.3
STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.40, Part 141 Subpart Q Appendix A, 141.201-141.210, 42 U.S.C. Chapter 6A Subchapter XII [300f, 309g, 309h, 309i]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.110-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the requirements for notification of the public when a public water system violates provisions of 401 KAR Chapter 8. Some provisions relating to the certification of a public notification may be considered more stringent than federal requirements. Those provisions relate to documenting how the public notification was performed and information to identify the water system and the violation for which the public notification was performed. The information is administrative only and is necessary so that the cabinet can ensure that the public is adequately notified of violations of the standards of 401 KAR Chapter 8.

Section 1. General Provisions. The owner or operator of a public water system shall give public notice according to this administrative regulation.

(1) The owner or operator of a public water system shall give notice for a violation of the standards in 401 KAR Chapter 8, and for other situations, as listed in this subsection. Appendix A to 40 C.F.R. Part 141, Subpart Q [July 29, 2004] identifies the tier assignment for each specific violation or situation that requires a public notice [Appendix A is adopted without change in Section 14 of this administrative regulation.]

(a) Violations of 401 KAR Chapter 8, which shall be:
1. Failure to comply with an applicable maximum contaminant level, or MCL, or maximum residual disinfectant level, or MRDL;
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2. Failure to comply with a prescribed treatment technique, or TT;
3. Failure to perform water quality monitoring, as required by 401 KAR Chapter 8; and
4. Failure to comply with testing procedures as prescribed by 401 KAR Chapter 8.
(b) Variance and exemptions issued pursuant to 401 KAR 8:060;
1. Operation under a variance or an exemption issued pursuant to 401 KAR 8:060; and
2. Failure to comply with the requirements of a schedule that has been set under a variance or exemption issued pursuant to 401 KAR 8:060.
(c) Special public notices:
1. a. Occurrence of a waterborne disease outbreak or other waterborne emergency;
   b. Exceedance of the nitrate MCL by a noncommunity water system, if granted permission by the cabinet under 401 KAR 8:250, [40 C.F.R. 141.14(d); and]
   c. Exceedance of the secondary maximum contaminant level, or SMCL, for fluoride; and
   d. Availability of unregulated contaminant monitoring data; and
2. If the cabinet determines that a situation violates the provisions of 401 KAR Chapter 8, the cabinet may require public notice pursuant to this administrative regulation.
(2) Tiers. Three (3) tiers of public notices shall be used that take into consideration the seriousness of the violation or situation and the potential adverse health effects that may be involved. The public notice requirements shall be determined by the tier to which it is assigned, as follows: Appendix A to 40 C.F.R. Part 141, Subpart Q (July 29, 2004) identifies the tier assignment for each specific violation or situation.
(a) Tier 1 public notice: for violations of 401 KAR Chapter 8 and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;
(b) Tier 2 public notice: for all other violations of 401 KAR Chapter 8 and situations with potential to have serious adverse effects on human health;
(c) Tier 3 public notice: for all other violations of 401 KAR Chapter 8 requiring public notification and situations not included in Tier 1 or Tier 2.
(3) Notification.
(a) A public water system shall provide public notice to persons served by the water system in accordance with this administrative regulation.
1. A public water system that sells or otherwise provides drinking water to other public water systems, or consecutive water systems, shall give public notice to the owner or operator of the other system or consecutive system.
2. The consecutive system shall provide public notice to the persons it serves.
(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the system may limit distribution of the public notice to only persons served by that portion of the system that is out of compliance. The system shall obtain written permission from the cabinet for limiting distribution before distributing the notice.
(c) Certification. After the public notification has been made, the public water system shall send a copy of the public notice and a certification of its distribution to the cabinet in accordance with the following requirements:
1. Within ten (10) days of completing the public notification requirements of this administrative regulation, the public water system shall submit to the cabinet for the initial public notice and any repeat notices, a certification that it has fully complied with the public notification requirements of this administrative regulation.
2. The certification shall include:
   a. The system’s name;
   b. PWSID number;
   c. The violation’s monitoring period covered by the notice;
   d. The violation number, type of violation, and contaminants included in the violation;
   e. An explanation of how the system distributed the public notification to its customers;
   f. The names of the consecutive systems that were given public notice pursuant to paragraph (a) of this subsection and their PWSID numbers; and
   g. A verification that the public notice contains the ten (10) elements required in a public notification, as specified in Section 5(1) of this administrative regulation.
3. The public water system shall include with the certification a copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media. If printed in the newspaper, the page of the newspaper with the public notice shall be submitted, showing the name of the newspaper and the date it was published.
4. The certification shall be signed and dated by the person responsible for preparing and distributing the public notice.
5. The system shall submit the certification and required documentation to the cabinet at the following address: Division of Water [Enforcement], ATTN: PN, 14 Reilly Road, Frankfort, Kentucky 40601.
(d) Record maintenance. The public water system shall retain a copy of each public notice issued pursuant to this administrative regulation and its certification pursuant to paragraph (c) of this subsection for at least three (3) years after its issuance.

Section 2. Tier 1 Public Notice - Form, Manner, and Frequency. (1) Tier 1 notices shall be given for the following violation categories and other situations:
(a) Violation of the MCL for total coliform or E. coli are present in the water distribution system, as specified in 401 KAR 8:200, or
2. if the water system fails to test for fecal coliforms or E. coli when a repeat sample tests positive for coliform, as specified in 401 KAR 8:200;
(b) 1. Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as specified in 401 KAR 8:250; or
2. if the water system fails to take a confirmation sample within twenty-four (24) hours of the system’s receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 401 KAR 8:250;
(c) Exceedance of the nitrate MCL by a noncommunity water system, if permitted to exceed the MCL by the cabinet under 401 KAR 8:250 [40 C.F.R. 141.14(d)], as allowed under Section 3(2) of this administrative regulation;
(d) Violation of the MRDL for chlorine dioxide, as specified in 401 KAR 8.510, if one (1) or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceeds the MRDL; or public notice to the owner or operator of the other system or consecutive system.
2. If the water system does not take the required samples in the distribution system, as specified in 401 KAR 8.510;
(e) Violation of treatment techniques specified in the surface water treatment rule in 401 KAR 8.150, or interim enhanced surface water treatment rule in 401 KAR 8.160, and 401 KAR 8.162 [treatment techniques requirement] resulting from a single exceedance of the maximum allowable turbidity limits, as identified in Appendix A to 40 C.F.R. Part 141, Subpart Q (July 29, 2004), if the cabinet determines after consultation that a Tier 1 notice shall occur; or
2. If consultation does not occur within twenty-four (24) hours after the system learns of the violation;
(f) Occurrence of a waterborne disease outbreak, as defined in 401 KAR 8.010, or other waterborne emergency, such as a:
1. Failure or significant interruption in key water treatment processes;
2. Natural disaster that disrupts the water supply or distribution system; or
3. Chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination; and
(g) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.
(2) When Tier 1 notice required. A public water system shall:
(a) Provide a public notice of a Tier 1 violation as soon as practical but no later than twenty-four (24) hours after the system learns
of the violation;
(b) Initiate consultation with the cabinet as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and
(c) Comply with all additional public notification requirements, including repeat notices or direction on the duration of the posted notice, that are established as a result of the consultation with the cabinet. These requirements may include the timing, form, manner, frequency, and content of any repeat notices, and other actions designed to reach all persons served.
(3) Tier 1 notices - form and manner.
(a) A public water system shall provide the Tier 1 public notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served.
(b) The form and manner of a Tier 1 public notice used by the public water system shall fit the specific situation, and shall be designed to reach residential, transient, and nontransient users of the water system.
(c) To reach all persons served, a water system shall use, at a minimum, one (1) or more of the following forms of delivery, as applicable to the system:
1. Appropriate broadcast media, such as radio and television;
2. Posting of the notice in conspicuous locations in the area served by the water system;
3. Hand delivery of the notice to persons served by the water system;
4. Another delivery method that has been approved in writing by the cabinet.

Section 3. Tier 2 Public Notice - Form, Manner, and Frequency of Notice. (1) Tier 2 public notices shall be given for the following violation categories and other situations:
(a) A violation of the MCL, MRDL, and treatment technique requirements, unless a Tier 1 notice is required under Section 2 of this administrative regulation, or the cabinet determines that a Tier 1 notice is required;
(b) A violation of the monitoring and testing procedure requirements, if the cabinet determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and
(c) Failure to comply with the terms and conditions of a variance or exemption in place.
(2) When Tier 2 notice required.
(a) Initial notice.
1. A public water system shall provide public notice of a Tier 2 violation as soon as practical, but no later than thirty (30) days after the system learns of the violation.
2. If the public notice is posted, the notice shall remain in place while the violation or situation persists, but for no less than seven (7) days, even if the violation or situation is resolved.
3. Except as provided in clause (b) of this subparagraph, the cabinet may allow additional time for the initial notice of up to three (3) months from the date system learns of the violation.
(b) The cabinet shall not:
(i) Grant an extension to the thirty (30) day deadline for an unresolved violation; or
(ii) Allow across-the-board extensions for other violations or situations that require a Tier 2 public notice.
(c) Extensions granted by the cabinet shall be in writing.
(b) Repeat notice.
1. The public water system shall repeat the notice every three (3) months while the violation or situation persists, unless the cabinet determines in writing that appropriate circumstances warrant a less frequent repeat notice.
2. The repeat notice shall not be given less frequently than once per year.
3. The system shall not give less frequent repeat notice for:
   a. An MCL violation under the total coliform rule; or
   b. A treatment technique violation under the federal surface water treatment rule (December 31, 1990), [or] interim enhanced surface water treatment rule (December 16, 1998), or long-term enhanced surface water treatment rule (January 14, 2002).
4. There shall be no across-the-board reductions in the repeat notice frequency for other ongoing violations that require a Tier 2 repeat notice.
5. Cabinet determinations allowing repeat notices to be given less frequently than once every three (3) months shall be in writing.
(c) Turbidity violations.
1. The system shall consult with the cabinet for a violation of the treatment technique requirement from the surface water treatment rule or interim or long-term enhanced surface water treatment rule, resulting from a single exceedance of the maximum allowable turbidity limit.
2. For a turbidity violation specified in subparagraph 1 of this paragraph, a public water system shall consult with the cabinet as soon as practicable, but no later than twenty-four (24) hours after the public water system learns of the violation, to determine if a Tier 1 public notice under Section 2 of this administrative regulation is required to protect public health.
3. If consultation does not take place within the twenty-four (24) hour period, the water system shall distribute a Tier 1 notice of the violation within the next twenty-four (24) hours, which shall be no later than forty-eight (48) hours after the system learns of the violation, following the requirements under Section 2(2) and (3) of this administrative regulation.
(3) Tier 2 notices - form and manner. A public water system shall provide the initial public notice and repeat Tier 2 notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:
(a) Community water system. A community water system shall provide notice by:
   1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
   2. Other methods reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who do not pay water bills or do not have service connection addresses, for example, house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.
(b) Methods may include:
   i. Publication in a local newspaper;
   ii. Delivery of multiple copies for distribution by customers who provide their drinking water to others, for instance apartment building owners or large private employers;
   iii. Posting in public places served by the system or on the Internet;
   iv. Delivery to community organizations;
(b) Noncommunity water system. A noncommunity water system shall provide notice by:
1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known;
2. Other methods reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. Those persons may include those served who may not see a posted notice because the posted notice is not In a location they routinely pass by.
(b) Other methods may include:
   i. Publication in a local newspaper or newsletter distributed to customers;
   ii. Use of e-mail to notify employees or students; or
   iii. Delivery of multiple copies in central locations, for example, community centers.
(c) Upon written request from the water system, the cabinet may allow a different form and manner of public notice.

Section 4. Tier 3 Public Notice - Form, Manner, and Frequency of Notice. (1) The following violations or situations shall require a Tier 3 public notice:
(a) A monitoring violation under 401 KAR Chapter 8, except that required to be a Tier 1 or Tier 2 violation under Section 2 or 3
of this administrative regulation;
(b) Failure to comply with a testing procedure established in 401 KAR Chapter 8, unless a Tier 1 notice is required by Section 2 of this administrative regulation;
(c) Operation under a variance or an exemption granted under 401 KAR 6.060; and
(d) Availability of unregulated contaminant monitoring results, as required under Section 7 of this administrative regulation; and
(2) Exceedance of the fluoride secondary maximum contaminant level, as required under Section 8 of this administrative regulation.
(2) When Tier 3 notice provided.
(a) Initial notice. A public water system shall provide public notice of a Tier 3 violation no later than one (1) year after the public water system learns of the violation or situation begins operating under a variance or exemption.
(3) Repeat notice. Following the initial notice, the public water system shall repeat the notice annually while the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice shall remain in place while the violation, variance, exemption, or other situation persists, but for no less than seven (7) days, even if the violation or situation is resolved.
(b) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve (12) months, if the timing requirements of paragraph (a) of this subsection are met.
(3) Other 3 notices - form and manner. A public water system shall provide the initial notice and any repeat notices of a Tier 3 violation in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:
(a) Community water system. A community water system shall provide notice by:
1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
2. Other methods reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who do not pay water bills or do not have service connection addresses, for instance house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.
(b) Other methods may include:
(i) Publication in a local newspaper;
(ii) Delivery of multiple copies for distribution by customers who provide their drinking water to others, for example apartment building owners or large private employers;
(iii) Posting in public places or on the Internet; or
(iv) Delivery to community organizations.
(b) Noncommunity water system. A noncommunity water system shall provide notice by:
1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and
2. Other methods reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include:
(a) Publication in a local newspaper or newsletter distributed to customers;
(b) Use of e-mail to notify employees or students; or
(c) Delivery of multiple copies in central locations, for instance community centers.
(c) Upon written request from the water system, the cabinet may allow a different form and manner of public notice.
(4) Alternative delivery method. For a community water system, the consumer confidence report required by 401 KAR 8.075 may be used as a vehicle for only the initial Tier 3 public notice and all required repeat notices[s] if:
(a) The report is provided to persons served no later than twelve (12) months after the system learns of the violation or situation as required in subsection (2) of this section;
(b) The Tier 3 notice contained in the system’s report meets the content requirements in Section 5 of this administrative regulation;
(c) The report is distributed following the delivery requirements in subsection (3) of this section; and
(d) The system submits a separate certification of the public notification as required by Section 1 of this administrative regulation and a certification of the report as required by 401 KAR 8.075, Section 2 of this section.
Section 5. Public Notice Contents. (1) Each public notice required by Section 1 of this administrative regulation shall include the following elements:
(a) A description of the violation or situation, including the contaminants of concern, and as applicable, the contaminant levels;
(b) When the violation or situation occurred;
(c) The potential adverse health effects from the violation or situation, including the standard language under subsection (4)(a) or (b) of this section, whichever is applicable;
(d) The population at risk, including subpopulations particularly vulnerable if exposed to the contamination in their drinking water;
(e) If alternative water supplies should be used;
(f) What sections of the water system should be isolated, including when they should seek medical help, if known;
(g) What the water system is doing to correct the violation or situation;
(h) When the water system expects to return to compliance or resolve the situation;
(i) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and
(j) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language in subsection (4)(c) of this section, if applicable.
Section 6. Exemption or Variance. A public water system operating under a variance or exemption shall include the following information in a public notice:
(a) If a public water system has been granted a variance or an exemption, the public notice shall contain:
1. An explanation of the reasons for the variance or exemption;
2. The date on which the variance or exemption was issued;
3. A brief status report on the steps the system is taking to install, treat, or otherwise comply with the terms and schedules of the variance or exemption; and
4. A notice of opportunity for public input in the review of the variance or exemption.
(b) If a public water system violates the conditions of a variance or exemption, the public notice shall contain the ten (10) elements listed in subsection (1) of this section.
Section 7. Certification. A public notice required by Section 1 of this administrative regulation shall:
(a) Be displayed in a conspicuous way when printed or posted;
(b) Not contain overly-technical language or very small print;
(c) Be formatted in a way that defeats the purpose of the notice;
(d) Not contain language that nullifies the purpose of the notice; and
(e) Be in compliance with the following multilingual requirement:
1. The public notice shall contain information in an appropriate language to reach a large proportion of non-English speaking consumers regarding the importance of the notice or contain a telephone number or address so that persons served by the system may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.
2. If the cabinet has not determined what constitutes a large proportion of non-English speaking consumers, the public water system shall include in the public notice the same information required in subparagraph 1 of this paragraph, as appropriate to reach
a large proportion of non-English speaking persons served by the
water system. (4) Standard language. A public water system shall include the
following standard language in its public notice
(a) Standard health effects language for an MCL or MRLD
violation, treatment technique violation, and violation of the condi-
tions of a variance or exemption. A public water system shall in-
clude in each public notice the health effects language specified in
Section 11 [49] of this administrative regulation corresponding to
each MCL, MRLDL, and treatment technique violation listed in Ap-
pendix A to 40 C.F.R. Part 141, Subpart Q (July 29, 2006), and
for each violation of a condition of a variance or exemption.
(b) Standard language for monitoring and testing procedure
violations. A public water system shall include the follow-
ing language in its notice, including the language necessary to complete
the information in the braces, for all monitoring and testing pro-
cedure violations listed in Appendix A to 40 C.F.R. Part 141, Subpart
Q (July 29, 2006): "We are required to monitor your drinking water
for specific contaminants on a regular basis. Results of regular
monitoring are an indicator of whether or not your drinking water
meets health standards. During [compliance period] we ["did not
monitor or test" or "did not complete all monitoring or testing"] for
[contaminants], and therefore cannot be sure of the quality of your
drinking water during that time."
(c) Standard language to encourage the distribution of the
public notice to all persons served. A public water system shall in-
clude in each of its notices the following language, if applicable: "Please
share this information with all the other people who drink this
water, especially those who may not have received this notice directly
(for example, people in apartments, nursing homes, schools, and
businesses). You can do this by posting this notice in a public
place or distributing copies by hand or mail."

Section 6. New Billing Units or Customers. (1) A community
water system shall give a copy of the most recent public notice for
any continuing violation, the existence of a variance or exemption,
or other ongoing situations requiring a public notice to all new bill-
ing units or new customers before or when services begin.
(2) A noncommunity water system shall continuously post the
public notice in conspicuous locations to inform new consumers of
a continuing violation, variance or exemption, or other situation
requiring a public notice while the violation, variance, exemption, or
other situation persists.

Section 7. Special Notice of Monitoring Results Availability. (1)
The owner or operator of a community or nontransient noncommu-
ity water system that is required to monitor under 40 C.F.R. 141,
Subpart Q; or 40 C.F.R. 414, Subpart Q shall provide to all persons served by
the system of the availability of the results of the sampling no later than
twelve (12) months after the monitoring results are known.
(2) The form and manner of the public notice required by sub-
section (1) of this section shall follow the requirements for a Tier 3
public notice prescribed in Section 4(3), (4)(a), (c), and (d) of this
administrative regulation. The notice shall also identify a person
and provide the telephone number to contact for information on the
monitoring results.

Section 8. Special Notice for Fluoride Exceedance. (1)(a) A
community water system that exceeds the fluoride secondary
maximum contaminant level of two (2) mg/l as specified in 401
KAR 8.600, as determined by the last single sample taken in ac-
cordance with 401 KAR 8.250, but does not exceed the maximum
contaminant level of four (4) mg/l for fluoride, as specified in 401
KAR 8.250, shall provide the public notice in subsection (3) of this
section to persons served by the system.
(b) Public notice shall be provided as soon as practical but no
later than twelve (12) months from the date the water system
learned of the violation.
(c) A copy of the notice shall also be sent to all new billing
units and new customers when service begins and to the public health
officer of the Cabinet for Health and Family Services.
(d) The public water system shall repeat the notice at least
annually while the secondary MCL is being exceeded.
(e) If the public notice is posted, the notice shall remain in
place while the secondary MCL is being exceeded, but for no less
than seven (7) days, even if the exceedance is eliminated.
(f) The cabinet may require an initial notice sooner than twelve
(12) months and repeat notices more frequently than annually, if
necessary, to notify the consumers of an exceedance.
(g) Form and manner. The form and manner of the special
public notice required by this section, including repeat notices,
shall follow the requirements for a Tier 3 public notice in Section
4(3), (4)(a), (c), and (d) of this administrative regulation.
(h) The notice shall contain the following mandatory language,
including the language necessary to complete the information in
the braces: "This is an alert about your drinking water and a cos-
metic dental problem that might affect children under nine years
of age. At low levels, fluoride can help prevent cavities, but children
drinking water containing more than 2 milligrams per liter (mg/l) of
fluoride may develop cosmetic discoloration of their permanent
teeth (dental fluorosis). The drinking water provided by your com-
munity water system [name] has a fluoride concentration of [insert
value] mg/l."

* * *

*Dental fluorosis, in its moderate or severe forms, may result in
a brown staining and/or pitting of the permanent teeth. This prob-
lem occurs only in developing teeth, before they erupt from the
gums. Children under nine should be provided with alternative
sources of drinking water or water that has been treated to remove
the fluoride to avoid the possibility of staining and pitting of their
permanent teeth. You may also want to contact your dentist about
proper use by young children of fluoride-containing products. Older
children and adults may safely drink the water.

"Drinking water containing more than 4 mg/l of fluoride (The
U.S. Environmental Protection Agency's drinking water standard)
can increase your risk of developing bone disease. Your drinking
water does not contain more than 4 mg/l of fluoride, but we're re-
quired to notify you when we discover that the fluoride levels in
your drinking water exceed 2 mg/l because of this cosmetic dental
problem."

"For more information, please call [name of water system con-
tact] of [name of community water system] at [phone number].
Some home water treatment units are also available to remove
fluoride from drinking water. To learn more about available home
water treatment units, you may call NSF International at 1-877-
NSF-HELP."*

Section 9. [8-] Special Notice for Specific Nitrates Exceedances.
(1) The owner or operator of a noncommunity water system that
has been granted permission by the cabinet to exceed the nitrates
MCL under 401 KAR 8.250 [40 C.F.R. 141.441(b) and (d)] shall provide
notice to all persons served by the system of the exceedance. The cabinet shall
issue under Section 2(1) and (2) of this administrative regulation.
(2) A noncommunity water system granted permission by the
owner to exceed the nitrate MCL under 401 KAR 8.250 [40 C.F.R.
441.44(d)] shall provide continuous posting of the fact that nitrate
levels exceed ten (10) mg/l and the potential health effects of ex-
posure, according to the requirements for a Tier 1 notice delivery
under Section 2(3) of this administrative regulation and the content
requirements in Section 5 of this administrative regulation.

Section 10. [9-] Notice by Cabinet. (1) The cabinet may give
the notice required by this administrative regulation on behalf of
the owner and operator of the public water system if the cabinet
complies with the requirements of this administrative regulation.
(2) The owner or operator of the public water system shall
remain responsible for ensuring that the requirements of this ad-
ministrative regulation are met, even if the cabinet provides the
notice on behalf of the owner and operator.

Section 11. [10-] Standard Health Effects Language. In its pub-
lic notice of a violation required by Section 1 of this administrative
regulation, a public water system shall provide the following health
effects language for the indicated contaminant:
(a) Total coliforms. Coliforms are bacteria that are naturally
present in the environment and are used as an indicator that other,
potentially-harmful, bacteria may be present. Coliforms were found
in more samples than allowed and this was a warning of potential
problems.

(b) Fecal coliform, E. coli, fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(c) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(d) Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, or Cryptosporidium. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(2) Inorganic chemicals.

(a) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(b) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) Bari um. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(e) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(f) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) Chromium, total. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(h) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, enamel hypoplasia, and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine (9) years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(j) Mercury, inorganic. Some people who drink water containing mercury in excess of the MCL over many years could experience kidney damage.

(k) Nitrate. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) Nitrates. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill, and if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) Total nitrate and nitrite. Infants below the age of six (6) months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail loss, numbness in fingers or toes, or problems with their circulation.

(o) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(3) Lead and copper.

(a) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(b) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(4) Synthetic organic chemicals.

(a) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(b) 2,4,5-TP. Silvex. Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(c) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(d) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(e) Benz(a)pyrene, PAHs. Some people who drink water containing benz(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(f) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(g) Chlorodane. Some people who drink water containing chlorodane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(h) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(i) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.

(j) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(k) Dibromochloropropane or DBCP. Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(l) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(m) Oxyln, 2,3,7,8-TCDD. Some people who drink water containing oxyln in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(n) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(o) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(p) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(q) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years...
can experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(g) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys.

(h) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys.

(i) trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys.

(j) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(k) Ethylene. Some people who drink water containing ethylene in excess of the MCL over many years may have an increased risk of getting cancer.

(l) Ethylbenzene. Some people who drink water containing ethylbenzene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(m) Styrene. Some people who drink water containing styrene in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(n) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(o) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(p) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(q) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(r) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(s) Tcchloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

(t) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(u) Xylenes, total. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(v) Radioactive contaminants. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(w) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(x) Combined radium, 226 and 228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

(y) Uranium, for a community water system. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

(z) Disinfection by-products, by-product precursors, and disinfectant residuals. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(a) Total trihalomethanes, or TTHMs. Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

(b) Haloacetic acids, or HAA. Some people who drink water containing haloacetic acids in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
may have an increased risk of getting cancer.

(c) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(d) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(e) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(f) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(g) Chlorine dioxide.

1. If any two (2) consecutive daily samples taken at the entrance to the distribution system are above the MRDL:
   a. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
   b. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.

2. If one (1) or more distribution system samples are above the MRDL:
   a. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
   b. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
   (h) Control of DBP precursors, or TOC. Total organic carbon, or TOC, has no health effects. However, total organic carbon provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAA's). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(8) Other treatment techniques.

(a) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(b) Chlorophyll. Some people who drink water containing high levels of chlorophyll over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.


(2) The provisions of the public notification rule related to the public notification bars shall be governed by Appendix A.
the requirements of the regulations in 401 KAR Chapter 8 would be required to issue a "public notification" to its customers according to the requirement in this amended regulation.

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

(a) List the actions each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. All Public Water Systems will comply with the Public Notification requirements of this amendment, which may require them to provide notifications to the public as described.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only cost associated with this amendment would be realized in the various formats of public notification available to each Public Water System.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Meeting the requirements of this amendment are necessary to avoid any compliance deficiencies regarding public notification.

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

(a) Initially: None

(b) On a continuing basis: None

(c) What is the source of the funding to be used? None.

(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 needed to implement this amendment.

(7) TIERING: Is tiering applied? Yes, due to the federal definition of various sized public water systems and how the regulation applies to each, it is necessary to address various size systems differently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.40 and 40 D.F.R. Part 141 subpart Q Appendix A.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. This regulation and its amendment are required so that Kentucky can maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for public notification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Most of the regulation and its amendments are the same as the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The provisions related to the certification of the public notification are more stringent to ensure the Cabinet that the public was correctly notified of any violations. These requirements are critical in nature and do not impose a financial burden on the system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 414.100, 414.101, 414.102, 414.103, & 414.104 C.F.R. Part 8, Subpart Q Appendix A.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

REVENUES (+/-): No anticipated impact.

EXPENDITURES (+/-): No anticipated impact.

OTHER EXPLANATION: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection
Division of Water (Amendment)

401 KAR 8:075. Consumer confidence reports.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.25(e), 141.40 [141.42, 141.143], 141.151-141.155. 42 U.S.C. Chapter 6A Subchapter XII [300c-300g-300l-300l]

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.25(c), 141.40 [141.42, 141.143], 141.151-141.155, 42 U.S.C. Chapter 6A Subchapter XII [300c-300g-300l-300l]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semi-public use. This administrative regulation establishes the requirements for consumer confidence reports. This administrative regulation establishes requirements different from the federal regulation for reporting and record-keeping to ensure that accurate reports are prepared and distributed to customers by specified dates, and for content and distribution requirements to ensure that a precise and clear report is distributed to customers.

Section 1. Applicability. (1) Notwithstanding 401 KAR 8:020, Section 2, a community water system shall submit an annual report to its customers and to the cabinet according to the requirements in this administrative regulation. The report shall contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(2) An existing community water system shall deliver its report by July 1 of each year.

(b) The report shall contain data prescribed by Section 2(2)(c)(e) of this administrative regulation collected during or before the previous calendar year.

3. A new community water system shall deliver its first report by July 1 of the year after its first full calendar year in operation. Subsequent reports shall be delivered by July 1 of each year.

A community water system that sells water wholesale to another community water system shall deliver the applicable information required in Section 2 of this administrative regulation to the buyer system.

(a) By April 1 of each year; or
(b) On a date mutually agreed upon by the seller and the purchaser. The date shall be specifically included in a contract between the parties.

Section 2. Report Contents. The report required by this administrative regulation shall contain the information specified in this section and Section 3 of this administrative regulation. The report shall include the name of the water system near the top of the report, or on the front cover.

1. Information on the source of the water delivered:
   (a) The report shall identify each source of the water delivered by providing information on:
       1. The type of water, either surface water, groundwater, or other specified water type; and
       2. The commonly used name and location of the body of water.
   (b) If a source water assessment has been completed, the report shall notify consumers of the availability of the information and how to obtain it. A system may highlight in the report significant sources of contamination in the source water area.
   2. If the cabinet has performed a source water assessment of the system, the report shall include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the cabinet or written by the operator.

2. Definitions. The report shall contain the definitions found in 401 KAR 8.010 for the following terms:
   (a) Maximum contaminant level goal, or MCLG;
   (b) Maximum contaminant level, or MCL;
   (c) Variance and exemption, if the system is operating under a variance or an exemption issued under 401 KAR 8.060; and
   (d) Treatment technique, action level, maximum residual disinfectant level goal or MRDLG, or maximum residual disinfectant level or MRDL, as applicable, if the report contains data on a contaminant for which the U.S. EPA has set a treatment technique, action level, MRDL, or MRDLG.

3. Information on detected contaminants:
   (a) The report shall contain information on the following contaminants that are detected in the water, subject to mandatory monitoring, except Cryptosporidium:
       1. The regulated contaminants that are subject to an MCL, action level, maximum residual disinfectant level, or treatment technique; and
       2. The unregulated contaminants for which monitoring is required by 40 C.F.R. 141.42 (October 23, 2002) [Disinfection-by-products or microbial contaminants for which monitoring is required by 40 C.F.R. 141.42 and 141.43, except as provided under sub-section (4)(a) of this section, and that are detected in the finished water].
   (b) The data relating to the contaminants in paragraph (a) of this subsection shall be displayed in one (1) table or several adjacent tables. If a community water system includes in the report other monitoring results including a nondetected contaminant, the results shall be displayed separately.
   (c) The data shall be derived from data collected to comply with cabinet and U.S. EPA monitoring and analytical requirements during the previous calendar year except [that]
       1. If a system is allowed to monitor for regulated contaminants less often than once a year then:
       2. [b] The report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the administrative regulations in 401 KAR Chapter 8.

3. [a] Data that are older than five (5) years may be reported.

2. Results of monitoring in compliance with 40 C.F.R. 141.42 and 141.43 shall be included for only five (5) years from the date of the last sample or until the detected contaminant becomes regulated and subject to routine monitoring requirements, whichever occurs first.

3. [d] For detected regulated contaminants listed in Table A in this paragraph, the table in the report shall contain the information required in subparagraphs 1 to 10 of this paragraph.

<p>| Table A. Converting MCL Compliance Values for Consumer Confidence Reports |
|-----------------------------|--------------------------|--------------------------|--------------------------|
| Contaminant | Traditional MCL in mg/L | To convert for CCR, multiply by | MCL in CCR Units | MCLG in CCR Units |
|-----------------------------|--------------------------|--------------------------|--------------------------|
| Microbiological contaminants |
| Total coliform bacteria | For a system that collects ≥ 40 samples per month: 5% of monthly samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample | For a system that collects ≥ 40 samples per month: 5% of monthly samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample | 0 |
| Fecal coliform and E. coli | TT, ppm | TT, ppm | 0 |
| Total organic carbon | 30 µg/L | 30 µg/L | 0 |
| Radioactive contaminants |
| Beta or photon emitters | 4 mrem/yr | 4 mrem/yr | 0 |
| Alpha emitters | 15 pCi/L | 15 pCi/L | 0 |
| Combined radium | 5 pCi/L | 5 pCi/L | 0 |
| Uranium | 30 µCi/L | 30 µCi/L | 0 |
| Inorganic contaminants |
| Antimony | 0.006 | 1000 | 6 ppb | 6 |
| Arsenic, until January 23, 2006; After January 23, 2006 | 0.05 | 1000 | 50 ppb | 0 |
| Asbestos | 7 MFL | 7 MFL | 7 |
| Barium | 2 | 2 ppm | 2 |
| Beryllium | 0.04 | 1000 | 4 ppb | 4 |
| Bromate | 0.01 | 1000 | 10 ppb | 0 |
| Cadmium | 0.05 | 1000 | 5 ppb | 5 |
| Chloramines | MRDL = 4 | MRDL = 4 ppb | MRDLG = 4 |
| Chlorine | MRDL = 4 | MRDL = 4 ppb | MRDLG = 4 |
| Chlorine dioxide | MRDL = 4 | MRDL = 800 ppb | MRDLG = 800 |
| Chlorite | 1 | 1 ppm | 0.8 |
| Chromium | 1 | 100 ppb | 100 |</p>
<table>
<thead>
<tr>
<th>Substance</th>
<th>AL = 1.3 ppm</th>
<th>AL = 1.3 ppm</th>
<th>1.3 ppm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copper</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>Fluoride</td>
<td>4</td>
<td>4 ppm</td>
<td>4</td>
</tr>
<tr>
<td>Lead</td>
<td>AL = 015</td>
<td>1000</td>
<td>15 ppb</td>
</tr>
<tr>
<td>Mercury, inorganic</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Nitrate</td>
<td>10</td>
<td>10 ppb</td>
<td>10</td>
</tr>
<tr>
<td>Nitric</td>
<td>1</td>
<td>1 ppm</td>
<td>1</td>
</tr>
<tr>
<td>Selenium</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
</tr>
<tr>
<td>Thallium</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Synthetic organic contaminants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2,4-D</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
</tr>
<tr>
<td>2,4,5-TP, Selvex</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
</tr>
<tr>
<td>Acrylamide</td>
<td>TT</td>
<td>TT</td>
<td>0</td>
</tr>
<tr>
<td>Alachlor</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Atrazine</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
</tr>
<tr>
<td>Benzo(a)pyrene, or PAH</td>
<td>.0002</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Carbofuran</td>
<td>.04</td>
<td>1000</td>
<td>0</td>
</tr>
<tr>
<td>Chlorfenviroprene</td>
<td>.02</td>
<td>1000</td>
<td>0</td>
</tr>
<tr>
<td>Dalapon</td>
<td>2</td>
<td>1000</td>
<td>0</td>
</tr>
<tr>
<td>Di(2-ethylhexyl) adipate</td>
<td>.4</td>
<td>1000</td>
<td>0</td>
</tr>
<tr>
<td>Di(2-ethylhexyl) phthalate</td>
<td>.006</td>
<td>1000</td>
<td>0</td>
</tr>
<tr>
<td>Dibromochloropropane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Dinoseb</td>
<td>.07</td>
<td>1000</td>
<td>7 ppb</td>
</tr>
<tr>
<td>Diquat</td>
<td>.02</td>
<td>1000</td>
<td>20 ppb</td>
</tr>
<tr>
<td>Dioxin, 2,3,7,8-TCDD, 10000</td>
<td>.00000003</td>
<td>1,000,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Endothall</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>Endrin</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Epichlorohydrin</td>
<td>TT</td>
<td>TT</td>
<td>0</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>.00005</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>.7</td>
<td>1000</td>
<td>700 ppb</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>.004</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>.0002</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
</tr>
<tr>
<td>Lindane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>.04</td>
<td>1000</td>
<td>40 ppb</td>
</tr>
<tr>
<td>Oxamyl, or Vydate</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>PCBs, or Polychlorinated biphenyls</td>
<td>.0005</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
</tr>
<tr>
<td>Pciorom</td>
<td>.5</td>
<td>1000</td>
<td>500 ppb</td>
</tr>
<tr>
<td>Smazine</td>
<td>.004</td>
<td>1000</td>
<td>4 ppb</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
</tr>
<tr>
<td>Volatile organic contaminants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benzene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>o-Dichlorobenzene</td>
<td>.8</td>
<td>1000</td>
<td>600 ppb</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
<td>.075</td>
<td>1000</td>
<td>75 ppb</td>
</tr>
<tr>
<td>1,2-Dichloroethene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>.007</td>
<td>1000</td>
<td>7 ppb</td>
</tr>
<tr>
<td>cis,trans-Dichloroethylene</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
</tr>
<tr>
<td>Dichloromethane</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>1,2-Dichloropropene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>.7</td>
<td>1000</td>
<td>700 ppb</td>
</tr>
<tr>
<td>Halocarbons, or HAA</td>
<td>.060</td>
<td>1000</td>
<td>60 ppb</td>
</tr>
<tr>
<td>Styrene</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>TTHMs, or Total trimethanes</td>
<td>.10/080</td>
<td>1000</td>
<td>100/800 ppb</td>
</tr>
<tr>
<td>Toluene</td>
<td>.2</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>Xylenes</td>
<td>10</td>
<td>10 ppm</td>
<td>10</td>
</tr>
</tbody>
</table>
For a system that serves >10,000 people and that uses as its source surface water or groundwater under the direct influence of surface water;

For monitoring conducted after January 1, 2004, for a system that serves >10,000 and that uses as its source groundwater not under the influence of surface water or that serves ≤10,000 and that uses as its source surface water or groundwater under the direct influence of surface water.

Key:
- AL = Action level
- MCL = Maximum contaminant level
- MCLG = Maximum contaminant level goal
- MFL = Million fibers per liter
- MRDL = Maximum residual disinfectant level
- MRDLG = Maximum residual disinfectant level goal
- mg/yr = milligrams per year, a measure of radiation absorbed by the body
- n/a = Not applicable
- NTU = Nephelometric turbidity units, a measure of water clarity
- pCi/L = picocuries per liter, a measure of radioactivity
- ppm = parts per million, or milligrams per liter, mg/L
- ppb = parts per billion, or micrograms per liter, µg/L
- ppt = parts per trillion, or nanograms per liter
- ppq = parts per quadrillion, or picograms per liter
- TT = Treatment technique

1. The MCL for that contaminant expressed as a number equal to or greater than one and zero-tenths (1.0), as provided in Table A;
2. The MCLG for that contaminant, expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant. The report shall include the definition for treatment technique or action level, as appropriate;
4. For a contaminant subject to an MCL, except turbidity, total organic compounds, and total coliforms, the highest contaminant level used to determine compliance with 401 KAR 8.010 to 401 KAR 8.550 and the range of detected levels, as indicated in this subparagraph, expressed in the same unit as the MCL. If a result is rounded to determine compliance with the MCL, rounding shall be done before multiplying the result by the factor listed in Table A:
   a. If compliance with the MCL is determined annually or less frequently: the highest detected level at a sampling point and the range of detected levels;
   b. If compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points; or
   c. If compliance with the MCL is determined on a system-wide basis: by calculating a running annual average of all samples at all sampling points: the average and range of detection;
5. For turbidity reported pursuant to 401 KAR 8.150, [or] 401 KAR 8.160, or 401 KAR 8.162: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 401 KAR 8.150, [and] 401 KAR 8.160, and 401 KAR 8.162 for the filtration technology being used. The report shall include an explanation of the reason for measuring turbidity;
6. For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;
7. For total coliform:
   a. The highest monthly number of positive samples for systems collecting fewer than forty (40) samples per month; or
   b. The highest monthly percentage of positive samples for systems collecting at least forty (40) samples per month;
8. For fecal coliform: The total number of positive samples;
9. For total organic carbons, TOCs: The lowest running annual average of the percent removal of TOCs achieved to the percent removal required, calculated quarterly, the range of the monthly ratios, and an explanation of the treatment technique; and
10. The likely source of each detected contaminant, to the best of the operator's knowledge. Specific information on a contaminant may be available in a sanitary survey or source water assessment, and shall be used if it is available to the operator. If the operator lacks specific information on the likely source, the report shall include one (1) or more of the typical sources for that contaminant listed in Table B that are most applicable to the system.

<p>| Table B. Major Sources and Health Effects Language for Regulated Contaminants |</p>
<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Major Sources in Drinking Water</th>
<th>Health Effects Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microbiological contaminants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total coliform bacteria</td>
<td>Naturally present in the environment.</td>
<td>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems</td>
</tr>
<tr>
<td>Fecal coliform and E. coli</td>
<td>Human and animal fecal waste.</td>
<td>Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.</td>
</tr>
<tr>
<td>Total organic carbon</td>
<td>Naturally present in the environment.</td>
<td>Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes, or THMs, and haloacetic acids, or HAAs. Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer</td>
</tr>
</tbody>
</table>

Turbidity | Soil runoff. | Turbidity has no health effects. However, turbidity can interfere with
<table>
<thead>
<tr>
<th>Radioactive contaminants</th>
<th>Discharge and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beta or photon emitters</td>
<td>Decay of natural and man-made deposits. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particles and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Alpha emitters</td>
<td>Erosion of natural deposits. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Combined radium</td>
<td>Erosion of natural deposits. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Uranium</td>
<td>Erosion of natural deposits. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.</td>
</tr>
<tr>
<td>Inorganic contaminants</td>
<td>Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder</td>
</tr>
<tr>
<td>Antimony</td>
<td>Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.</td>
</tr>
<tr>
<td>Arsenic</td>
<td>Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Asbestos</td>
<td>Decay of asbestos cement water mains; erosion of natural deposits. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.</td>
</tr>
<tr>
<td>Barium</td>
<td>Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.</td>
</tr>
<tr>
<td>Beryllium</td>
<td>Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.</td>
</tr>
<tr>
<td>Bromate</td>
<td>By-product of drinking water disinfection. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of cancer.</td>
</tr>
<tr>
<td>Cadmium</td>
<td>Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.</td>
</tr>
<tr>
<td>Chloramines</td>
<td>Water additive used to control microbes. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MCL could experience stomach discomfort or anemia.</td>
</tr>
<tr>
<td>Chlorine</td>
<td>Water additive used to control microbes. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.</td>
</tr>
<tr>
<td>Chlorine dioxide</td>
<td>Water additive used to control microbes. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.</td>
</tr>
<tr>
<td>Chlorite</td>
<td>By-product of drinking water disinfection. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.</td>
</tr>
<tr>
<td>Chromium</td>
<td>Discharge from steel and pulp mills; erosion of natural deposits. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.</td>
</tr>
<tr>
<td>Copper</td>
<td>Corrosion of household plumbing systems; erosion of natural deposits. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.</td>
</tr>
<tr>
<td>Cyanide</td>
<td>Discharge from steel and metal factories, discharge from plastic and fertilizer factories. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.</td>
</tr>
<tr>
<td>Substance</td>
<td>Effects and Sources</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Fluoride</td>
<td>Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.</td>
</tr>
<tr>
<td>Lead</td>
<td>Corrosion of household plumbing systems; erosion of natural deposits.</td>
</tr>
<tr>
<td>Mercury, inorganic</td>
<td>Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from crop-land.</td>
</tr>
<tr>
<td>Nitrate</td>
<td>Runoff from fertilizer use; leaching from septic tanks; sewage; erosion of natural deposits.</td>
</tr>
<tr>
<td>Nitrite</td>
<td>Runoff from fertilizer use; leaching from septic tanks, sewage, erosion of natural deposits.</td>
</tr>
<tr>
<td>Selenium</td>
<td>Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.</td>
</tr>
<tr>
<td>Thallium</td>
<td>Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.</td>
</tr>
<tr>
<td>2,4-D</td>
<td>Runoff from herbicide used on row crops.</td>
</tr>
<tr>
<td>2,4,5-TP, or Silvex</td>
<td>Residue of banned herbicide.</td>
</tr>
<tr>
<td>Acrylamide</td>
<td>Added to water during sewage or wastewater treatment.</td>
</tr>
<tr>
<td>Alachlor</td>
<td>Runoff from herbicide used on row crops.</td>
</tr>
<tr>
<td>Atrazine</td>
<td>Runoff from herbicide used on row crops.</td>
</tr>
<tr>
<td>Benzo(a)pyrene, or PAH</td>
<td>Leaching from linings of water storage tanks and distribution lines.</td>
</tr>
<tr>
<td>Carbofuran</td>
<td>Leaching of soil fumigant used on rice and alfalfa.</td>
</tr>
<tr>
<td>Chlorodane</td>
<td>Residue of banned termitecide.</td>
</tr>
<tr>
<td>Dalapon</td>
<td>Runoff from herbicide used on nighs of way</td>
</tr>
<tr>
<td>Di (2-ethylhexyl) adipate</td>
<td>Discharge from chemical factories.</td>
</tr>
<tr>
<td>Di (2-ethylhexyl) phthalate</td>
<td>Discharge from rubber and chemical factories.</td>
</tr>
<tr>
<td>Dibromochloropropane</td>
<td>Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.</td>
</tr>
<tr>
<td>Dinoeb</td>
<td>Runoff from herbicide used on soybeans and vegetables</td>
</tr>
<tr>
<td>Dicuat</td>
<td>Runoff from herbicide use.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Compound</th>
<th>Source of contamination</th>
<th>Health effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dioxin, or 2,3,7,8-TCDD</td>
<td>Emissions from waste incineration and other combustion; discharge from chemical factories.</td>
<td>Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Endothall</td>
<td>Runoff from herbicide use.</td>
<td>Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.</td>
</tr>
<tr>
<td>Endrin</td>
<td>Residue of banned insecticide.</td>
<td>Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.</td>
</tr>
<tr>
<td>Epichlorohydrin</td>
<td>Discharge from industrial chemical factories; an impurity of some water treatment chemicals.</td>
<td>Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>Discharge from petroleum refineries.</td>
<td>Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>Runoff from herbicide use.</td>
<td>Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>Residue of banned pesticide.</td>
<td>Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>Breakdown of heptachlor.</td>
<td>Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>Discharge from metal refineries and agricultural chemical factories.</td>
<td>Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>Discharge from chemical factories.</td>
<td>Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.</td>
</tr>
<tr>
<td>Lindane</td>
<td>Runoff or leaching from insecticide used on cattle, lumber, gardens.</td>
<td>Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>Runoff or leaching from insecticides used on fruits, vegetables, alfalfa, livestock.</td>
<td>Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Oxamyl, or Vydate</td>
<td>Runoff or leaching from insecticides used on apples, potatoes, and tomatoes.</td>
<td>Some people who drink water containing oxamyl in excess of the MCL over many years could experience problems with their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>PCBs, or Polychlorinated biphenyls</td>
<td>Runoff from landfills; discharge of waste chemicals.</td>
<td>Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their liver or kidneys, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>Discharge from wood preserving factories.</td>
<td>Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Picloram</td>
<td>Herbicide runoff.</td>
<td>Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>Simazine</td>
<td>Herbicide runoff.</td>
<td>Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
<td>Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Benzene</td>
<td>Discharge from factories; leaching from gas storage tanks and landfills.</td>
<td>Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>Discharge from chemical plants and other industrial activities.</td>
<td>Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>Discharge from chemical and agricultural chemical factories.</td>
<td>Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>o-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage.</td>
</tr>
<tr>
<td>Compound</td>
<td>Discharge Source</td>
<td>Risk</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>1,2-Dichloroethane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>cis-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>trans-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing trans-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>Dichloromethane</td>
<td>Discharge from pharmaceutical and chemical factories.</td>
<td>Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2-Dichloropropane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>Discharge from petroleum refineries.</td>
<td>Some people who drink water containing ethylbenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>Haloacetic acids, or HALA</td>
<td>Byproduct of drinking water disinfection.</td>
<td>Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Styrene</td>
<td>Discharge from rubber and plastic factories; leaching from landfills.</td>
<td>Some people who drink water containing styrene in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>Discharge from factories and dry cleaners.</td>
<td>Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>Discharge from textile-finishing factories.</td>
<td>Some people who drink water containing 1,2,4-trichlorobenzene in excess of the MCL over many years could experience changes in their adrenal glands.</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>Discharge from metal degreasing sites and other factories.</td>
<td>Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,1,2-trichloroethane in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>Discharge from metal degreasing sites and other factories.</td>
<td>Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>TTHMs, or total trihalomethanes</td>
<td>By-product of drinking water disinfection.</td>
<td>Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Toluene</td>
<td>Discharge from petroleum factones.</td>
<td>Some people who drink water containing toluene in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>Leaching from PVC piping; discharge from plastics factories.</td>
<td>Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Xylenes</td>
<td>Discharge from petroleum factories; discharge from chemical factories.</td>
<td>Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.</td>
</tr>
</tbody>
</table>

Key:
- AL = Action level
- MCL = Maximum contaminant level
- MCLG = Maximum contaminant level goal
- MFL = Million fibers per liter
- MRDL = Maximum residual disinfectant level
- MRDLG = Maximum residual disinfectant level goal
- mrem/yr = millirems per year, a measure of radiation absorbed by the body
- NA = Not applicable
- NTU = Nephelometric turbidity units, a measure of water clarity
- pCi/l = picocuries per liter, a measure of radioactivity
- ppm = parts per million, or milligrams per liter, mg/l
- ppb = parts per billion, or micrograms per liter, μg/l
- ppt = parts per trillion, or nanograms per liter
- ppq = parts per quadrillion, or picograms per liter
- TT = Treatment technique

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(e) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the report shall identify each separate distribution system. Additionally, a system that produces separate reports tailored to include data for each service area or use another mechanism to clearly indicate the detections from the various water sources.

(f) A table shall clearly identify the data indicating violations of MCLs, MCLDs, or treatment techniques, and the report shall contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation.

To describe the potential health effects, the system shall use the relevant language from Table B above for the contaminant that has a violation.

(g) For detected unregulated contaminants for which monitoring is required, except Cryptosporidium, the table shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reason for monitoring for unregulated contaminants.

(2) [44] Information on Cryptosporidium, radion, and other contaminants:

(a) If the system has performed monitoring for Cryptosporidium, monitoring procedures, monitoring techniques, and the monitoring indicates that Cryptosporidium may be present in the source water or the finished water, the report shall include:
1. A summary of the results of the monitoring; and
2. An explanation of the significance of the results.

(b) If the system has performed monitoring for radon that indicates that radon may be present in the finished water, the report shall include:
1. The results of the monitoring; and
2. An explanation of the significance of the results.

(c) If the system has performed additional monitoring that indicates the presence of another contaminant in the finished water, a system may report results that may indicate a health concern. The system shall contact the Safe Drinking Water Hotline, 800-426-4791, to determine if EPA has proposed a national primary drinking water regulation. [A Detect above a proposed MCL or health advisory level indicates a possible health concern. For that contaminant, the report shall include:
1. The results of the monitoring; and
2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(4) [66] Compliance with 401 KAR 8:010 to 401 KAR 8:550: In addition to the requirements of subsection (2)(g) of this section, the report shall note a violation that occurred during the year covered by the report of a requirement listed in paragraphs (a) through (g) of this subsection, and include a clear and readily understandable explanation of the violation, a potential adverse health effect, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data.

(b) Filtration and disinfection prescribed by 401 KAR 8.150. For a system that failed to install adequate filtration or disinfection equipment or processes, or had a failure of the filtration or disinfection equipment or processes that constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: *Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.*

(c) Lead and copper control requirements prescribed by 401 KAR 8.300. For a system that fails to take one (1) or more actions prescribed by 401 KAR 8.300, Sections 2(5), 3, 4, 5, or 6, the report shall include the applicable language of subsection (2)(g)(f) of this section for lead, copper, or both.

(d) Treatment techniques for acrylamide and epichlorohydrin prescribed by 401 KAR 8.100, Section 2. For a system that violates the requirements of 401 KAR 6 100, Section 2, the report shall include the relevant language from subsection (2)(g)(f) of this section.

(e) Recordkeeping of compliance data.

(f) Special monitoring requirements of 40 C.F.R. 141.40 (October 23, 2002) and 401 KAR 6 250, Section 15 (14).

(g) Violation of a term of a variance, an exemption, or an administrative or judicial order.

(h) Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued under 401 KAR 8:050, the report shall contain:

(a) An explanation of the reason for the variance or exemption;

(b) The date on which the variance or exemption was issued;

(c) The name or names of the treatment plants the system is taking to install treatment; find an alternative source of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(d) A notice of opportunity for public input in the review or renewal of the variance or exemption.

(i) [77] Additional information.

(a) The report shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language of paragraphs 1 through 3 of this paragraph, or a system may use its own comparable language.

(b) The system shall include the language for paragraph 4 of this paragraph, as a separate paragraph.

1. The sources of drinking water, both tap water and bottled water, include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and may pick up substances resulting from the presence of animals or from human activity.

2. Contaminants that may be present in source water include a. Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

b. Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

3. Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.

b. Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.

4. Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.

5. To ensure that tap water is safe to drink, U.S. EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water that shall provide the same protection for public health.

4. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects may be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(b) The report shall include the telephone number of the owner, operator, or designee of the community water system as a source of additional information about the report.

(c) If a system has a significant proportion of non-English speaking residents, the system shall include in the report information in the appropriate language regarding the importance of the report or contain a link to obtaining assistance in the appropriate language.
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to water.

(e) A system may include additional information deemed necessary for public education consistent with, and not detracting from, the purpose of the report.

Section 3. Additional Health Information. (1) A report shall prominently display the following language as a separate paragraph: *Some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should consult their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).*

(2) A system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L shall:
(a) Include in its report a short informational statement about arsenic, using language such as: *While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.*; or
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(3) A system that detects nitrate at levels above five (5) mg/L, but below the MCL shall:
(a) Include a short informational statement about the impacts of nitrate on children using language such as: *Nitrate in drinking water at levels above ten (10) ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.*; or
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(4) A system that detects lead above the action level in more than five (5) percent, and up to and including ten (10) percent, of homes sampled shall:
(a) Include a short informational statement about the special impact of lead on children using language such as: *Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline, 800-426-4791.*; or
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(5) [A community water system that detects THMs above 0.080 mg/L, but below the MCL in 401-KAR 8-600 on an annual average, monitored and calculated under the provisions of 401-KAR 8-600, shall include health effects language for THMs prescribed by Section 2(3)(d) of this administrative regulation.

(6) Beginning in the report due after January 4, 2005 [the effective date of the administrative regulation], and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L shall include the health effects language for arsenic prescribed by Section 2(2)(4)(h)(d) of this administrative regulation.

Section 4. Report Delivery and Recordkeeping. (1) Except as provided in subsection (6) of this section, a community water system shall mail or otherwise deliver a copy of the report to each customer.

(2) The system shall also make a good-faith effort to reach consumers who do not get water bills. An adequate good-faith effort shall be tailored to the consumer who is served by the system, but is not a bill-paying customer, such as a renter or worker.

(a) The system shall describe ways in which the system will contact the consumer as required in subsection (3) of this section. The good-faith efforts shall be made in addition to the distribution method that is used by the system to distribute its report as required for the size of the system.

(b) The system shall make a good-faith effort to reach consumers by a method appropriate to the particular consumer, such as:
(i) Posting the report on the Internet;
(ii) Mailing to postal patrons in metropolitan areas;
(iii) Advertising the availability of the report in the news media;
(iv) Publishing the report in a local newspaper;
(v) Posting in a public place such as a cafeteria or lunch room of a public building;

(f) Delivering of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;

(g) Delivering the report to a community organization; or

(h) Other means that accomplish the goal of notifying the consumer.

(3) Within fourteen (14) days of distributing the report to its customers, but no later than the date specified in Section 1(2)(a) of this administrative regulation, the community water system shall also mail a copy of the report and the certification required in paragraph (b) of this subsection to the cabinet at the following address: Division of Water, Drinking Water Branch, Attm., CCR, 14 Rail Road, Frankfort, Kentucky 40601.

The system shall include a copy of the report and certification for each PWIS that the system has, and shall include the name of the system and its PWIS number on all submittals. The system shall not mail the report or the certification to the cabinet until it has distributed the report to its customers.

(b) Certification.

The community water system shall mail a certification to the cabinet by July 1 annually.

2. The certification shall include the typed or printed name and title of the person responsible for the overall operation or management of the system, and shall be signed by that person. The certification shall contain the following documentation:

(a) The following two (2) statements that are true for the system:

(i) *The report was prepared and distributed according to the requirements for our system*;

(ii) *The report contains information that is correct and consistent with the compliance monitoring data previously submitted to the Division of Water.*

(b) An explanation of how and when the report was distributed to its customers. If a system serves a population of less than 10,000 and used the mailing waiver pursuant to subsection (6)(a) of this section, it shall include a copy of the report from the local newspaper, showing the date the report was printed, and the name of the newspaper;

c. If the system serves a population of less than 10,000, and used the mailing waiver allowed in subsection (6)(a) of this section, a description of how the system qualified for the mailing waiver by demonstrating that it performed all three (3) actions required for the mailing waiver;

d. If the system serves a population of less than 500 and used the waiver allowed in subsection (6)(b) of this section, documentation of how it notified its customers that the report was available; and

e. A description of the system's good-faith efforts to reach its nonbill-paying customers, as required in subsection (2) of this section;

(4) A community water system shall make its report available to the public upon request.

(b) By the date specified in Section 1 of this administrative regulation, a community water system serving 100,000 or more persons shall post its current year's report to a publicly-accessible site on the Internet. The version that is posted shall be identical to the report that is made available to the customers, to the extent allowed by the computer or electronic system.
(6) Waiver. A system shall document in the certification required in subsection (3)(b) of this section how it qualified for the waiver, by showing how it performed either the three (3) actions in paragraph (a) of this subsection, or the action required in paragraph (b) of this subsection, as applicable for the system's size.

(a) A community water system that serves fewer than 10,000 persons shall be waived from the mailing requirement in subsection (1) of this section if the system performs the following three (3) actions before the date specified in Section 1 of this administrative regulation:

1. Publishes the report in at least one (1) newspaper serving the area in which the system is located. The version that is printed in the newspaper shall be the same as is submitted to the cabinet, to the extent allowed by the newspaper;
2. Informs the customers that the reports will not be mailed unless requested, either in the newspapers in which the reports are published, or by another means approved by the cabinet by which the customers are notified; and
3. Makes the reports available to the public upon request.

(b) A system that serves no more than 500 persons may forego the requirements of paragraph (a)(1) and (2) of this subsection if it provides notice to its customers at least once per year before the date specified by Section 1 of this administrative regulation by mail, door-to-door delivery, or by posting in an appropriate location that the report is available upon request.

(7) A community water system shall retain a copy of its consumer confidence report and certification for at least three (3) years.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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. 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 request a transcript, you may be required to pay for it. 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 January 2, 2006. Send written notification of intent to be heard at the public hearing and comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Justin Dearing, Regulations Coordinator
Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation prescribes the requirements that a community water system must follow for preparing and distributing a "consumer confidence report" to its customers. The report contains information on the quality of water the system provides to its customers. Requirements include the specific language to be contained in a report, how the report is to be distributed, when the reports are due to the customers and the Division of Water, and the content of the certifications.
(b) The necessity of this administrative regulation: This regulation is required so that Kentucky can maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for consumer confidence reports in 40 C.F.R. Part 141, Subpart O (40 C.F.R. 141.151 - 141.155).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is consistent with the federal regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the cabinet and supports Kentucky's comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update Kentucky's current consumer confidence report regulation to comply with federal regulations for unregulated contaminant monitoring rule. The report contains information on the quality of water the system provides to its customers.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for Kentucky to maintain primacy form the U.S. Environmental Protection agency for the implementation and enforcement of the federal regulation for consumer confidence reports.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the federal regulations in 40 C.F.R. Part 141, Subpart O (40 C.F.R. 141.151 - 141.155).
(d) How the amendment will assist in the effective administration of the statutes: Requirements of the amended regulation include the specific language to be contained in a consumer confidence report, how the report is to be distributed, when the reports are due to the customers and the Division of Water, and the content of the certifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) The amendment will affect public water systems in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All Public Water Systems will meet the requirements of this amendment by complying with the reporting requirements for consumer confidence reports to the public.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost in complying with this amendment, if any, would be negligible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public Water Systems would avoid any compliance implications that would result from non-compliance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initial: None anticipated.
(b) On a continuing basis: None anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No establishment of fees nor increase in any existing fees as a result of this amendment.

(9) TIERING: Is tiering applied? Tiering may be implied in the form of "waivers" that are explained above, to large population systems or small population systems. These waivers are a benefit to the systems that meet the requirements of the waivers.
FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.25(e), 141.142, 141.143, 141.151 - 141.155, and 42 U.S.C. 300f, 300g, 300h, 300j.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. This regulation and its amendment are required so that Kentucky can maintain national and environmental protection Agency for the implementation and enforcement of the federal regulation for consumer confidence reports.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Most of the regulation and its amendments are the same as the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The provisions related to the certification of the reports to the Cabinet are more stringent to ensure the Cabinet that the reports were correctly distributed to the system's customers. Also, the regulation contains information on what is to be included in the report for total organic compounds. This information was not addressed by the U.S. Environmental Protection Agency in its regulation. These requirements are clerical in nature and do not impose a financial burden on the system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 40 C.F.R. 141.25(c) & (e), 141.40, 141.151 - 141.155, 42 U.S.C. Chapter 6A Subchapter XII

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not increase revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not increase revenue.

(c) How much will it cost to administer this program for the first year? This amendment will not increase cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase cost.

Note: 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
Regulation of Water (Amendment)

401 KAR 8:150. Disinfection, filtration, and recycling.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R.
with this requirement. Thus the value \( V \) in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

\[
V = \frac{c + d + e}{a + b} \times 100
\]

where:

- \( a \) = number of instances that the residual disinfectant concentration is measured;
- \( b \) = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC, is measured;
- \( c \) = number of instances that the residual disinfectant concentration is measured but does not measure at least two-tenths (0.2) milligrams per liter or ppm or the equivalent and no HPC is measured;
- \( d \) = number of instances that residual disinfectant concentration is below two-tenths (0.2) milligrams per liter and where the HPC is greater than 500/ml; and
- \( e \) = number of instances that the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(1) If the cabinet determines, based on site-specific considerations, that the system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1) of this administrative regulation and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply.

(2) The cabinet may, through its own or independent testing, determine that residual disinfection is not present throughout the distribution system, take action necessary to correct the problem and, if necessary, notify the public in accordance with 401 KAR 8.020, Section 2(9).

(3) Variances or exemptions shall not be granted for subsection (2) of this section.

(4) In addition to the requirements of this administrative regulation, a public water system that serves fewer than 10,000 people shall comply with the requirements in 401 KAR 8:162.

Section 2. Filtration. A public water system using a surface water source, a ground water system with wells with variable or high turbidity due to characteristics of the raw water that may cause an adverse health effect, and a ground water system under the direct influence of surface water shall establish a filtration system. The design for the system shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following:

(1) Conventional filtration treatment or direct filtration.

(a) If a public water system uses conventional filtration or direct filtration, the turbidity level of representative samples of the system’s filtered water shall be less than or equal to five tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1) of this administrative regulation, except that if the cabinet determines that the system is capable of achieving at least ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses, then the turbidity level of the system’s filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1) of this administrative regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for that system.

(b) If the cabinet determines that the system is capable of achieving at least ninety-five (95) percent removal or inactivation of viruses and 99.99 percent (4-log) removal or inactivation of Giardia lamblia cysts, and that the system is capable of achieving five tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, the cabinet may substitute this higher turbidity limit for that system. However, the cabinet shall not approve a turbidity limit that allows more than one (1) NTU in more than five (5) percent of the samples taken each month measured as specified in Section 3(1) of this administrative regulation.

(2) Other filtration technologies.

(a) A public water system may use a filtration technology not listed in subsections (1) through (2) of this section if it demonstrates to the cabinet, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of this administrative regulation, consistently achieves ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses. If a system meets this demonstration, the requirements of subsection (1) of this section shall apply.

(b) A system serving at least 10,000 people shall meet the requirements for other filtration technologies in 401 KAR 8:160, Section 4(2).

(3) A semipublic system may enter into a protocol with the cabinet whereby the filtration and disinfection requirements of this administrative regulation are achieved using filtration technology, disinfection technology, or a combination of both, if the technology will achieve a ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses. The protocol shall contain a schedule for maintenance and testing of the filtration and disinfection equipment to assure that the requirements of this subsection are met. Intensive bacteriological testing may be included in the protocol. If surface water is a source of water, filtration shall be an element of the protocol. If ground water is the only source of water, the semipublic and public water systems eligible under this subsection may enter into a protocol with the cabinet to demonstrate through a regular schedule of bacteriological testing that filtration or disinfection is not needed. The protocol shall stipulate that any positive bacteriological sampling may require disinfection of the water, unless the cabinet has reason to believe that the positive result was due to error.

(5) A variance or exemption shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. Analyses required by this administrative regulation shall be conducted in accordance with the requirements of 40 C.F.R. 141.74 (June 29, 2004) [i.e. in effect on July 1, 2003, adopted without change in Section 7 of the administrative regulation].

(2) Monitoring requirements. A public water system that uses a surface water source or a ground water source under the influence of surface water shall monitor in accordance with paragraphs (a) and (b) of this subsection or when filtration is installed.

(a) Turbidity measurements shall be performed by a public water system on representative samples of the system’s filtered water at least every four (4) hours that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the cabinet. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be recorded. The schedule shall reflect monitoring at least every four (4) hours that the system serves water to the public. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth
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filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing that less frequent monitoring is sufficient to indicate effective filtration performance. If a system serves 500 or fewer persons, the cabinet may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines, in writing, that less frequent monitoring is sufficient to indicate effective filtration performance.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by a public water system continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment, and systems serving 3,500 or fewer persons may take grab samples in lieu of providing continuous monitoring for an ongoing basis at the frequencies each day prescribed below:

<table>
<thead>
<tr>
<th>System Size by Population</th>
<th>Samples/Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 500</td>
<td>1</td>
</tr>
<tr>
<td>501 to 1,000</td>
<td>2</td>
</tr>
<tr>
<td>1,001 to 2,500</td>
<td>3</td>
</tr>
<tr>
<td>2,501 to 3,500</td>
<td>4</td>
</tr>
</tbody>
</table>

The day's samples shall not be taken at the same time. The sampling intervals shall be subject to cabinet review and approval. If the residual disinfectant concentration falls below the requirements of Section 1(1) of this administrative regulation in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 1(1) of this administrative regulation.

(c) The residual disinfectant concentration shall be measured at least at the points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which derives both a surface water source, or a groundwater source, direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that the points are more representative of treated, or disinfected, water quality within the distribution system. Heterotrophic bacteria measured as heterotrophic plate count, or HPC as specified in subsection (1) of this section, may be measured in lieu of residual disinfectant concentration.

(d) If the cabinet determines in writing, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by subsection (1) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines. (1) New construction projects and line extensions.

(a) Disinfection of water lines. A water distribution system, including storage distribution tanks, or all extensions to existing systems, shall be thoroughly disinfected before being placed in service.

(b) A water distribution system shall disinfect with chlorine or chlorine compounds, in amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing.

(c) Other methods and testing procedures that provide an equivalent level of protection may be used if the cabinet grants prior written approval.

(d) A new water distribution line shall not be placed into service until bacteriological samples taken at the points specified in paragraph (f) of this subsection are examined and are shown to be negative following disinfection.

(e) A water distribution system shall submit to the cabinet results of bacteriological samples for each new construction project, replacement, or extension to existing systems, after the disinfection and flushing.

(f) A sample shall be taken in the newly-constructed line at each of the following points:

1. Within 1,200 feet downstream of each connection point between the existing and new lines;
2. One (1) mile intervals; and
3. Each dead end, without omitting any branch.

(g) A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses.

(h) Sample bottles shall be clearly identified as "special" construction tests and the results submitted to the cabinet shall be clearly marked as "special" samples.

(i) Notification of analytical results shall be submitted to the cabinet with the routine monthly compliance bacteriological samples, unless the bacteriological samples are to be used to lift a boil water advisory. Samples to be used to lift a boil water advisory shall be submitted to the cabinet as soon as results are known.

(2) Line repairs due to breaks or ruptures.

(a) The system shall thoroughly flush the break area and maintain at least a minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation.

(b) The system may leave the line in service or return the line to service before receiving bacteriological results, and may forego a boil water advisory if:

1. Pressure is maintained;
2. The break area is thoroughly flushed and
3. At least the minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation is maintained.

(c1). The system shall take at least two (2) bacteriological tests, one (1) located before, or just upstream of, the break or rupture, and one (1) located behind, or just downstream of, the break or rupture, as close to the break or rupture as practical. Additional samples may be required, if necessary to be representative of the area affected by the break.

2. Sample bottles shall be clearly identified as "special" tests and the results submitted to the cabinet shall be clearly marked as "special" samples.

(d) Records of results shall be submitted to the cabinet with routine monthly compliance samples unless the samples are required to lift a boil water advisory, and shall be maintained for one (1) year. Samples needed to remove a boil water advisory shall be submitted to the cabinet as soon as the results are known.

(e) A water system shall notify the cabinet immediately if the pressure drops below twenty (20) pounds per square inch in the distribution system surrounding the break, or a break or rupture occurs that requires more than eight (8) hours to repair, with the eighth (8) hours beginning when the water system becomes aware of the break.

(f) The system shall issue a boil water advisory if the cabinet determines that a boil water advisory is necessary to protect the public health.

(g) Reports pursuant to 401 KAR 8:020, Section 2(7)(c) are not required for a loss of pressure, break, or rupture occurring in service lines serving only one (1) single family residence.

(h). A community or nontransient noncommunity public water system shall maintain a log of all breaks or ruptures, which shall include the:

1. Date and location of the break or rupture;
2. Time it was discovered;
3. Population affected;
4. Length of time required to repair the break or rupture;
5. Date and time disinfectant residuals are detected; and
6. Date and time bacteriological samples are taken.

2. The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.

Section 6. Recycling. (1) Applicability. The following type of system shall comply with the requirements in subsections (2) to (5) of this section. A public water system that:

(a) Uses as its source surface water or groundwater under the direct influence of surface water;
(b) Uses conventional filtration or direct filtration treatment; and
(c) Recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes.

(2) Reporting. A system shall have notified the cabinet in writing by the effective date of this administrative regulation. If the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes, the notification shall include at least the following information.

(a) A plant schematic that shows:
   1. The origin of all flows that are recycled, including:
      a. Spent filter backwash water;
      b. Thicker supernatant; and
      c. Liquids from dewatering processes;
   2. The hydraulic conveyance used to recycle them; and
   3. The location where they are reintroduced back into the treatment plant.
(b) Typical recycle flow, in gallons per minute, or gpm;
(c) The highest observed plant flow experienced in the previous year, gpm;
(d) Design flow for the treatment plant in gpm; and
(e) The operating capacity for the plant, if the cabinet has approved the operating capacity.

(3) Required treatment technique.
(a) A system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system or an alternative location [approved by the cabinet by the effective date of this administrative regulation].

(b) If capital improvements are required to modify the recycle location to comply with paragraph (a) of this subsection, the capital improvements shall be completed no later than June 8, 2006.

(4) Recordkeeping. The system shall collect and retain on file the following recycle flow information for review and evaluation by the cabinet beginning the effective date of this administrative regulation:
(a) A copy of the recycle notification and information submitted to the cabinet under subsection (2) of this section;
(b) A list of all recycle flows and the frequency with which they are returned;
(c) The average and maximum backwash flow rate through the filters, and the average and maximum duration of the filter backwash process in minutes;
(d) The optimal filter run length and a written summary of how filter run length is determined;
(e) The type of treatment provided for the recycle flow;
(f) Data on the physical dimensions of the equalization or treatment unit;
(g) The typical and maximum hydraulic loading rates;
(h) The type of treatment chemicals used, and average dose and frequency of use; and
(i) The frequency at which solids are removed, if applicable.

Section 7. [Federal Regulation Adopted Without Change—40 C.F.R. 141.74, as in effect on July 1, 2003, is adopted without change. The subject matter of this administrative regulation relating to analytical methods shall be governed by this federal regulation.]


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or through www.water.ky.gov/dw.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006

FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky.

Indicate if interested in being notified if the cabinet shall notify this agency in writing by December 14, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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 January 2, 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: Justin Dearinger, Regulations Coordinator
Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes requirements for filtration and disinfection for specified public water systems. It contains historical state language regarding filtration and disinfection requirements, methodology, and monitoring requirements. It also contains the language for the disinfection of new and repaired water lines, and water treatment plant recycling of filter backwash water.
(b) The necessity of this administrative regulation: This regulation is necessary for Kentucky to maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for filtration and disinfection in 40 C.F.R. Part 141, Subpart H (40 C.F.R. 141.70 - 141.76). Since the promulgation of the federal and state regulation, the U.S. Environmental Protection Agency has promulgated other regulations (Subpart L, P, and T) that also affect this regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation complies with the federal regulation prior to U.S. Environmental Protection Agency promulgation of Subpart L, P, and T.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the cabinet and supports Kentucky's comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment to the regulation is necessary for Kentucky to maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for filtration and disinfection. This amendment will provide consistency between the federal requirement and Kentucky regulation.
(b) The necessity of the amendment to this administrative regulation: Historical state language on disinfection and filtration requirements is either redundant or in potential conflict with the existing 401 KAR 8:160 and 8:510, and the new federal regulation on Long-Term 1 Enhanced Surface Water Treatment Rule, which is being incorporated into Kentucky's regulation with 8:162.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment and regulation establish requirements for filtration and disinfection for specified public water systems. It contains historical state language regarding filtration and disinfection requirements, methodology, and monitoring requirements. It also contains the language for the disinfection of new and currently.
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repaired water lines, and water treatment plant recycling of filter backwash water.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the regulation is necessary to establish requirements for the disinfection, filtration, recycling, and testing of drinking water in a public or semipublic water system using surface water or groundwater under the direct influence of surface water.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the regulation applies to public water systems, community and noncommunity, that use as their source surface water or groundwater under the direct influence of surface water and systems that use groundwater as their source. There are approximately 250 such systems that produce water. Some of these systems, especially the groundwater systems, are small systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public Water Systems may have to add or modify their filtration system in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a cost associated with the modification or addition of drinking water filtration systems. These costs are on a case by case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public Water Systems meeting the requirements of this amendment would be ensuring the quality of the water provided to the public and avoid any resulting non-compliance actions.

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

(a) Initially: None anticipated.

(b) On a continuing basis: None anticipated.

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

(7) Provide an assessment of whether an 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 anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No.

(9) TIERING Is tiering applied? Yes. Due to the federal definitions of various sized public water systems and how the regulation applies to each, it is necessary to address various sized systems differently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.70 to 141.76, 142.16, 42 U.S.C. 300f, 300g, 300h, 300j.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. This regulation and its amendment are required so that Kentucky can maintain parity with the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for disinfection, filtration, and recycling.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Most of the regulation and its amendment are the same as the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment to the regulation is more stringent than federal requirements in that historically, Kentucky has required all public water systems to filter their water, and all groundwater systems to disinfect their water. These requirements have helped to provide safe drinking water to citizens of the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 40 C.F.R. 141.70 - 141.76, 142.16, & U.S.C. Chapter 6A Subchapter XII.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation amendment does not increase revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation amendment does not increase revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? This administrative regulation amendment does not increase cost for state or local governments.

(d) How much will it cost to administer this program for subsequent years? Not applicable. This administrative regulation amendment does not increase cost for state or local governments.

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

Revenues (+/-): None
Expenditures (+/-) None
Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:160. Enhanced filtration and disinfection for large systems serving at least 10,000 people.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.74, 141.170, 141.175, 42 U.S.C. Chapter 6A Subchapter XII.

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.74, 141.170, 141.175, 42 U.S.C. Chapter 6A Subchapter XII.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes requirements for filtration and disinfection for a public water system that serves at least [more than] 10,000 people.

Section 1. Applicability. [H] This administrative regulation shall be considered a national primary drinking water regulation. This administrative regulation establishes requirements for filtration and disinfection that are in addition to the criteria in 401 KAR 8:150 under which filtration and disinfection are required for a public water system that uses surface water or groundwater under the direct influence of surface water.

(2) Beginning January 1, 2002, unless otherwise specified-in
This administrative regulation, this administrative regulation shall apply to a system that serves at least 10,000 people and uses surface water or groundwater under the direct influence of surface water.

Section 2. General Provisions. (1) This administrative regulation establishes or extends treatment technique requirements instead of maximum contaminant levels for the following contaminants: Giarda lamblia, viruses, heterotrophic plate count bacteria, legionella, Cryptosporidium, and turbidity. A system that uses surface water or groundwater under the direct influence of surface water and that serves at least 10,000 people shall provide treatment of the source water that complies with these technique requirements, and that are in addition to those identified in 401 KAR 8:150. The treatment technique requirements shall consist of installing and properly operating water treatment processes that reliably achieve:

(a) At least ninety-nine percent (99) percent [2-log], or two (2) log removal, of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(b) Compliance with the profiling and benchmark requirements in Section 3 of this administrative regulation.

(2) A public water system subject to this administrative regulation shall be considered to be in compliance with subsection (1) of this section if it meets the applicable filtration requirements in either Section 4 of this administrative regulation or 401 KAR 8:150, Section 2 and the disinfection requirements in Section 3 of this administrative regulation and 401 KAR 8:150, Section 1.

Section 3. Disinfection Profiling and Benchmarking. (1) Determination of systems required to profile. A public water system subject to this administrative regulation shall determine its total trihalomethane, or THM, annual average using the procedures in paragraph (a) of this subsection and its haloacetic acid five (5), or HAAS, annual average using the procedures in paragraph (b) of this subsection. The annual average shall be the arithmetic average of the quarterly averages of four (4) consecutive quarters of monitoring.

(a) The THM annual average shall be the annual average during the same period as is used for the HAAS annual average.

1. A system that collected data under the provisions of 40 C.F.R. 141.140 to 141.144 shall use the results of the samples collected during the last four (4) quarters of required monitoring under 40 C.F.R. 141.144.

2. A system that uses granulated HAAS occurrence data that meet the provisions of paragraph (b) of this subsection shall use the data collected at the same time under the provisions of 401 KAR 8:600.

3. A system that uses HAAS occurrence data that meet the provisions of paragraph (b) of this subsection shall use THM occurrence data collected at the same time under the provisions of 401 KAR 8:600.

(b) The HAAS annual average shall be the annual average during the same period as is used for the THM annual average.

1. A system that collected data under the provisions of 40 C.F.R. 141.140 to 141.144 shall use the results of the samples collected during the last four (4) quarters of required monitoring under 40 C.F.R. 141.144.

2. A system that collected four (4) quarters of HAAS occurrence data that meet the routine monitoring sample number and location requirements for THM in 401 KAR 8:600 and handling and analytical method requirements of 40 C.F.R. 141.142(b)(1) may use those data to determine if the requirements of this section apply.

3. A system without four (4) quarters of HAAS occurrence data that meet the requirements of subparagraph 1 or 2 of the paragraph by March 31, 1999 shall have another conducted monitoring for HAAS that meets the routine monitoring sample number and location requirements for THM in 401 KAR 8:600 and handling and analytical method requirements of 40 C.F.R. 141.142(b)(1) to determine if the requirements of subsection (2) of this section apply. The monitoring shall have been completed so that the applicability determination was able to be made not later than March 31, 2000, or

b. Complied with the other provisions of the section as if the HAAS monitoring had been conducted and the results required compliance with subsection (2) of this section.

(c) The system may request that the cabinet approve a more representative annual data-set than the data set determined under paragraph (a) or (b) of this subsection for the purpose of determining applicability of the requirements of this section.

(d) The cabinet may require that a system use a more representative annual data-set than the data set determined under paragraph (c) or (b) of this subsection for the purpose of determining applicability of the requirements of this section.

(e) The system shall submit data to the cabinet according to the following schedule:

1. A system that collected THM and HAAS data under 40 C.F.R. 141.140 to 141.144, as required by paragraph (a) or (b) of this subsection, shall submit the results of the samples collected during the last twelve (12) months of required monitoring under 40 C.F.R. 141.142 not later than March 31, 2000.

2. A system that collected four (4) consecutive quarters of HAAS occurrence data that meet the routine monitoring sample number and location for THM in 401 KAR 8:600 and handling and analytical method requirements of 40 C.F.R. 141.142(b)(1), as allowed by paragraphs (a) or (b) of this subsection, shall have submitted those data to the cabinet not later than April 16, 1999. Until the cabinet has obtained those data, the system shall conduct monitoring for HAAS using the monitoring requirements specified under paragraph (b) of this subsection.

3. A system that conducts monitoring for HAAS using the monitoring requirements specified by paragraphs (a) or (b) of this subsection shall have submitted THM and HAAS data no later than March 31, 2000.

4. A system that elected to comply with all other provisions of the section as if the HAAS monitoring had been conducted and the results required compliance with this section, as allowed under paragraph (b) of this subsection, shall have notified the cabinet in writing of its decision no later than December 31, 1999.

5. If the system elected to request that the cabinet approve a more representative annual data-set than the data set determined under paragraph (b) of this subsection, the system shall have submitted the request in writing no later than December 31, 1999.

6. A system that has either a THM annual average of greater than or equal to 0.064 mg/L or an HAAS annual average of greater than or equal to 0.048 mg/L [during the period identified in paragraphs (a) and (b) of this subsection] shall comply with subsection (2) of this section.

(c) Disinfection profiling.

1. (a) A system that meets the criteria in subsection (1)(f) of this section shall develop a disinfection profile of its disinfection practice for a period of up to three (3) years.

(b) The system shall monitor daily for twelve (12) consecutive months to determine the total logs of inactivation for each day of operation, based on the appropriate CT95 values in Tables 1.1 - 1.8, 2.1, and 3.1 of 40 C.F.R. 141.74(b), June 29, 2004, as appropriate, throughout the entire treatment plant. The system shall have begun this monitoring no later than April 1, 2000. As a minimum, the system with a single point of disinfectant application before the entrance to the distribution system shall conduct the monitoring in subparagraphs 1 to 4 of this paragraph. A system with more than one (1) point of disinfectant application shall conduct the monitoring in subparagraphs 1 to 4 of this paragraph for each disinfection segment. The system shall monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in 40 C.F.R. 141.74(a), June 29, 2004, as follows:

1. The temperature of the disinfectant water shall be measured once each day at each residual disinfectant concentration sampling point during peak hourly flow;

2. If the system uses chlorine, the pH of the disinfect water shall be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow;

3. The disinfectant contact time, or T, shall be determined for each day during peak hourly flow; and

4. The residual disinfectant concentration, or C, of the water before or at the first customer and before each additional point of

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disinfection shall be measured each day during peak hourly flow.

(c) Instead of the monitoring conducted under the provisions of paragraph (b) of this subsection to develop the disinfection profile, the system may elect to meet the requirements of subparagraph 1 of this paragraph. In addition to the monitoring conducted under the provisions of paragraph (b) of this subsection to develop the disinfection profile, the system may elect to meet the requirement of subparagraph 2 of this paragraph.

1. A public water system that has three (3) years of existing operational data may submit those data, a profile generated using those data, and a request that the cabinet approve use of those data instead of monitoring under the provisions of paragraph (b) of this subsection not later than March 31, 2000. The cabinet shall determine if these operational data are substantially equivalent to data collected under the provisions of paragraph (b) of this subsection. These data shall also be representative of Giardia lamblia inactivation through the entire treatment plant and not just of certain treatment segments. Until the cabinet approves this request, the system shall conduct monitoring under the provisions of paragraph (b) of this subsection.

2. In addition to the disinfection profile generated under paragraph (b) of this subsection, a public water system that has existing operational data may use those data to develop a disinfection profile for additional years. The system may use the additional yearly disinfection profiles to develop a benchmark under the provisions of subsection (3) of this section. The cabinet shall determine if those operational data are substantially equivalent to data collected under the provisions of paragraph (b) of this subsection. These data shall also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(d) The system shall calculate the total inactivation ratio as follows:

1. If the system uses only one (1) point of disinfectant application, the system shall determine the total inactivation ratio for the disinfection segment based on either of the following methods:
   a. Determine one (1) inactivation ratio, \( R_{in} \), before or at the first customer during peak hourly flow; or
   b. Determine successive ratio values, \( R_{in} \), representing sequential inactivation ratios, between the point of disinfectant application and a point or before or at the first customer during peak hourly flow. Under this alternative, the system shall calculate the total inactivation ratio by determining \( R_{in} \) for each sequence and then adding the \( R_{in} \) values together to determine their summation, or \( \Sigma R_{in} \).

2. If the system uses more than one (1) point of disinfectant application before the first customer, the system shall determine the CT value of each disinfection segment immediately before the next point of disinfectant application, or for the final segment, before or at the first customer during peak hourly flow. The \( CT_{in} \) value of each segment and \( \Sigma CT_{in} \) shall be calculated using the method in subparagraph 1 of this paragraph.

3. The system shall determine the total logs of inactivation by multiplying the value calculated in subparagraph 1 or 2 of this paragraph by three and zero-tenths (3.0).

(e) A system that uses either chloramines or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the cabinet.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the cabinet for review as part of a sanitary survey conducted by the cabinet.

(3) Disinfection benchmarking

(a) A system required to develop a disinfection profile under the provisions of subsections (1) and (2) of this section and that decides to make a significant change to its disinfection practice shall submit the proposed change to the cabinet for its approval before initiating any change. A significant change to disinfection practice shall be:

1. A change to the point of disinfection;
2. A change to the disinfectant used in the treatment plant;
3. A change to the disinfection process; and
4. Any other modification identified by the cabinet.

(b) A system that is modifying its disinfection practice shall calculate its disinfection benchmark using the following procedure:

1. For each year of profiling data collected and calculated under subsection (2) of this section, the system shall determine the lowest average monthly Giardia lamblia inactivation in each year of profiling data. The system shall determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data. The average shall be divided by the daily Giardia lamblia inactivation by the number of values calculated for that month; and
2. The disinfection benchmark shall be the lowest monthly average value, for a system with one (1) year of profiling data, or the average of lowest monthly average values, for a system with more than one (1) year of profiling data, of the monthly logs of Giardia lamblia inactivation in each year of profiling data.

(c) A system that uses either chloramines or ozone for primary disinfection shall also calculate the disinfection benchmark for viruses using a method approved by the cabinet.

(d) The system shall submit the following information to the cabinet as part of the approval process:

1. A description of the proposed change;
2. The disinfection profile for Giardia lamblia and viruses, if necessary, under subsection (2) of this section, and benchmark as required by paragraph (b) of this subsection; and
3. An analysis of how the proposed change will affect the current levels of disinfection.

Section 4. Filtration. A public water system subject to the requirements of this administrative regulation shall provide treatment consisting of both disinfection, as specified in 401 KAR 8:150, Section 1, and filtration treatment that complies with the requirements of subsections (1) and (2) of this section or 401 KAR 8:150, Section 2(2) or (3) [by-December 31, 2004].

1. Conventional filtration treatment or direct filtration.

(a) For a system using conventional filtration or direct filtration, the turbidity level or representative samples of a system's filtered water shall be less than or equal to three-tenths (0.3) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in 401 KAR 8:150, Section 3.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed one (1) NTU, measured as specified in 401 KAR 8:150, Section 3.

(c) A system that uses lime softening may acidify representative samples before analysis using a protocol approved by the cabinet.

(2) Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration.

(a) A public water system may use a filtration technology not listed in subsection (1) of this section or in 401 KAR 8:150, Section 2(2) or (3), if it demonstrates to the cabinet, using a pilot plant study or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 401 KAR 8:150, Section 1, consistently achieves ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and ninety-nine and ninety-nine (99.99) percent removal or inactivation of viruses, and ninety-nine (99) percent removal of Cryptosporidium oocysts, and the cabinet approves the use of the filtration technology.

(b) For an approval, the cabinet shall set turbidity performance requirements that the system shall meet at least ninety-five (95) percent of the time and that the system shall not exceed at a level that consistently achieves ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts, 89.9 percent removal or inactivation of viruses, and ninety-nine (99) percent removal of Cryptosporidium oocysts.

Section 5. Filtration Sampling Requirements. (1) Monitoring requirements for a system using filtration treatment. In addition to monitoring required by 401 KAR 8:150, Section 3, a public water system subject to the requirements of this administrative regulation that provides conventional filtration treatment or direct filtration shall conduct continuous monitoring of turbidity for each individual filter using an approved method in 40 C.F.R. 141.74(a), January 23, 2004, [adopted without change in Section 8 of this administrative regulation] and shall calibrate a turbidimeter using the procedure specified by the manufacturer. A system shall record the re-
sults of individual filter monitoring every fifteen (15) minutes.

(2) If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four (4) hours instead of continuous monitoring until the turbidimeter is repaired and back on-line. A system shall have a maximum of five (5) days after failure to repair the equipment. If the equipment is not repaired in the five (5) days, the system shall be in violation.

Section 6. Reporting and Recordkeeping Requirements. In addition to the reporting and recordkeeping requirements in 401 KAR 8:020, Section 2(7), a public water system subject to the requirements of this administrative regulation that provides conventional filtration treatment or direct filtration shall report monthly to the cabinet the information required in this section [beginning January 1, 2002]. In addition to the reporting and record keeping requirements in 401 KAR 8:020, Section 2(7), a public water system subject to the requirements of this administrative regulation that provides filtration approved under Section 4(2) of this administrative regulation shall report monthly to the cabinet the information specified in subsection (1) of this section [beginning January 1, 2002]. The reporting in subsection (1) of this section shall be required instead of the reporting specified in 401 KAR 8:020, Section 2(7)(a).1

(1) Turbidity measurements as required by Section 4 of this administrative regulation shall be reported within ten (10) days after the end of each month the system serves water to the public. The following information shall be reported:

(a) The total number of filtered water turbidity measurements taken during the month;

(b) The number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the turbidity limits specified in Section 4(1) or (2) of this administrative regulation;

(c) The date and value of a turbidity measurement taken during the month that exceeds one (1) NTU for a system using conventional filtration treatment or direct filtration, or that exceeds the maximum level set by the cabinet under Section 4(2) of this administrative regulation.

(2) A system shall maintain the results of individual filter monitoring taken under Section 5 of this administrative regulation for at least three (3) years. A system shall report that it has conducted individual filter turbidity monitoring under Section 5 of this administrative regulation within ten (10) days after the end of each month the system serves water to the public. A system shall report individual filter turbidity measurement results taken under Section 5 of this administrative regulation within ten (10) days after the end of each month the system serves water to the public only if the measurements demonstrate one (1) or more of the conditions in paragraphs (a) to (d) of this subsection. A system that uses lime softening may apply to the cabinet for an alternative exceedance level for the level specified in paragraphs (a) to (d) of this subsection if it demonstrates that a higher turbidity level in an individual filter is due to lime carryover only and is not due to degraded filter performance.

(a) For an individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart, the system shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred.

In addition, the system shall either:

a. Produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced; or

b. Report the obvious reason for the exceedance.

(b) For an individual filter that has a measured turbidity level of greater than five-tenths (0.5) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart at the end of the first four (4) hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system shall report the filter number, the turbidity, and the date on which the exceedance occurred.

In addition, the system shall either:

a. Produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced; or

b. Report the obvious reason for the exceedance.

(c) For an individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart during each of three (3) consecutive months, the system shall report the filter number, the turbidity, and the date on which the exceedance occurred.

2. In addition, the system shall conduct a self-assessment of the filter within fourteen (14) days of the exceedance and report that the self-assessment was conducted. The self-assessment shall consist of at least the following components:

a. Assessment of filter performance;

b. Development of a filter profile;

c. Identification and prioritization of factors limiting filter performance;

d. Assessment of the applicability of corrections; and

e. Preparation of a filter self-assessment report.

(d) For an individual filter that has a measured turbidity level of greater than two and zero-tenths (2.0) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart in each of two (2) consecutive months, the system shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred.

In addition, the system shall arrange for the cabinet or a third party approved by the cabinet to conduct a comprehensive performance evaluation pursuant to Section 7 of this administrative regulation no later than thirty (30) days after the exceedance. The evaluation shall be completed and submitted to the cabinet no later than ninety (90) days after the exceedance.

(e) Additional reporting requirements:

(i) If the turbidity exceeds one (1) NTU in representative samples of filtered water in a system using conventional treatment or direct filtration, the system shall notify the cabinet as soon as possible, but no later than the end of the next business day.

(ii) If the turbidity in representative samples of filtered water exceed the maximum level set by the cabinet under Section 4(2) of this administrative regulation for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system shall notify the cabinet as soon as possible, but no later than the end of the next business day.

Section 7. Comprehensive Performance Evaluation. (1) If notified by a system pursuant to Section 6(2)(d) of this administrative regulation, the cabinet or third party approved by the cabinet shall conduct a comprehensive performance evaluation to:

(a) Identify factors that may be adversely impacting a plant's capability to achieve compliance; and

(b) Emphasize an approach that a system may be able to implement without significant capital improvements.

The comprehensive performance evaluation shall consist of at least the following:

(a) Assessment of plant performance;

(b) Evaluation of major unit processes;

(c) Identification and prioritization of performance-limiting factors;

(d) Assessment of the applicability of comprehensive technical assistance; and

(e) The final report of the results of the evaluation.

[Section 8. Federal Regulation Adopted Without Change, 40 C.F.R. 141.74, as in effect on July 1, 2000, is adopted without change. The provisions of the administrative regulation relating to analyses and monitoring requirements shall be governed by the federal regulation.]

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. 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 request a transcript, you may be required to pay for it. 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 January 2, 2006. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Justin Dearinger, Regulations Coordinator, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes requirements for filtration and disinfection for specified public water systems that serve a population of 10,000 people or more and extends treatment technique requirements in lieu of maximum contaminant levels for Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. It sets a removal credit for Cryptosporidium, lowers filtered water turbidity limits, adds the requirements for disinfection profiling and disinfection benchmarking, and establishes monitoring and reporting criteria for individual filter turbidity. The regulation also establishes a process by which any disinfection changes must be approved by the Cabinet to preserve the protection gained by the regulation. The U.S. Environmental Protection Agency recently promulgated another federal regulation, Subpart T, in January 2002, which applies to systems that serve populations of less than 10,000 people.
   (b) The necessity of this administrative regulation: The regulation is necessary so that Kentucky can maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for enhanced filtration and disinfection in 40 C.F.R. Part 141, Subpart P (40 C.F.R. 141.170 - 141.175).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is consistent with the federal regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the cabinet and supports Kentucky's comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment to the regulation establishes requirements for filtration and disinfection for specified public water systems that serve a population of 10,000 people or more and extends treatment technique requirements in lieu of maximum contaminant levels for Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. It sets a removal credit for Cryptosporidium, lowers filtered water turbidity limits, adds the requirements for disinfection profiling and disinfection benchmarking, and establishes monitoring and reporting criteria for individual filter turbidity.
   (b) The necessity of the amendment to this administrative regulation: This amendment incorporates Into Kentucky's regulations the same provisions that were amended by U.S. Environmental Protection Agency during the promulgation of Subpart T.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the regulation updates the current regulation to meet the recently promulgated federal regulation (Subpart T), which applies to systems that serve populations of less than 10,000 people.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the regulation will incorporate Into Kentucky's regulations the same provisions that were amended by U.S. Environmental Protection Agency during the promulgation of Subpart T.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the regulation applies to public water systems, community and noncommunity, that use as their source surface water or ground water under the direct influence of surface water, and that serve a population of 10,000 or more. This amended regulation does not apply to small businesses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public Water Systems may have to add or modify their filtration system in order to comply with this amendment.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is a cost associated with the modification or addition of drinking water filtration systems. These costs are on a case by case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public Water Systems meeting the requirements of this amendment would be ensuring the quality of the water provided to the public and avoid any resulting noncompliance actions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: None anticipated.
   (b) On a continuing basis: None anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: NA

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is applied simply due to the federal regulation, which addresses only systems serving 10,000 people or more.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.74, 141.170 to 141.175, and U.S. C. Chapter 6 Subchapter XII.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. This amended regulation will be consistent with the federal regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amended regulation will not be more stringent than the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
VOLUME 33, NUMBER 6—DECEMBER 1, 2006

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems serving at least 10,000 people will be affected by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.74, 141.170 to 141.175, & 42 U.S.C. Chapter 6A Subchapter XII.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

   (c) How much will it cost to administer this program for the first year? No additional cost.

   (d) How much will it cost to administer this program for subsequent years? No additional cost.

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

   Revenues (+/-): None anticipated.

   Expenditures (+/-): None anticipated.

   Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water (Amendment)

401 KARI 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

RELATES TO: KRS 224.10-100(30), 224.10-110 [Chapter 224e], 40 C.F.R. Part 141 [1996]

REVENUE AUTHORITY: KRS 224.10-100(30) [224.10-400], 224.10-110, 40 C.F.R. 141.111, 141.23(3) [141.23], 141.41, 141.62 [1996], 42 U.S.C. Chapter 6A Subchapter XII [U.S.C.4., 2006, 306]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. [The Safe-Drinking-Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as for "other entrants" subject to the Act. The Commonwealth of Kentucky has accepted and is currently enforcing the "primary enforcement responsibility." This administrative regulation lists sampling and analytical requirements for certain inorganic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, could affect public health. [The administrative regulation conforms to, and is no more stringent than, federal regulations.]

Section 1. A community water system [system] and a nontransient, noncommunity water system [system] shall conduct monitoring to determine compliance with the maximum contaminant levels specified in Section 12 of this administrative regulation in accordance with this administrative regulation [section]. A transient, noncommunity water system [system] shall conduct monitoring to determine compliance with the nitrate and nitrates maximum contaminant levels in Section 12 of this administrative regulation. Monitoring shall be conducted as follows:

   (1) A groundwater system [system] shall take a minimum of one (1) sample at every entry point to the distribution system that [which] is representative of each well after treatment, [hereafter] called a sampling point, [to] be taken in the initial compliance period [beginning—January 1, 1993]. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

   (2) A Surface water system, including a system [systems], using a combination of surface and groundwater, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point that [which] is representative of each source after treatment, [hereafter] called a sampling point, [to] be taken in the initial compliance period [beginning—January 1, 1993]. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

   (3) If a system draws water from more than one (1) source and the sources are combined before distribution, the system may sample at an entry point to the distribution system during periods of normal operating conditions, [i.e., when water is representative of all sources being used].

   (4) The cabinet may reduce the total number of samples that [which] shall be analyzed by allowing the use of composting. Composites samples from a maximum of five (5) sampling points are allowed if the detection limit of the method used for analysis is less than one-fifth (1/5) of the MCL. Composting of samples shall be done in the laboratory.

(a) If the concentration in the composite sample is greater than or equal to one-fifth (1/5) of the MCL of any inorganic chemical, then a follow-up sample shall be taken within fourteen (14) days at each sampling point included in the composite. These samples shall be analyzed for the contaminants that [which] exceeded one-fifth (1/5) of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>MCL (mg/l)</th>
<th>Methodology</th>
<th>Detection Limit (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.006</td>
<td>Atomic Absorption; Furnace</td>
<td>0.003</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; Platform</td>
<td>0.0008^2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass Spectrometry</td>
<td>0.0004</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hydride Atomic Absorption</td>
<td>0.001</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.05, on or after January 23, 2006</td>
<td>Atomic Absorption; Platform-Stabilized Temperature</td>
<td>0.0006^3</td>
</tr>
<tr>
<td></td>
<td>0.010, on or after January 23, 2006</td>
<td>Atomic Absorption; Gaseous Hydride</td>
<td>0.001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass Spectrometry</td>
<td>0.0014^4</td>
</tr>
<tr>
<td>Asbestos</td>
<td>7 MFL</td>
<td>Transmission Electron Microscopy</td>
<td>0.01 MFL</td>
</tr>
<tr>
<td>Barium</td>
<td>2</td>
<td>Atomic Absorption; furnace technique</td>
<td>0.02</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; direct aspiration</td>
<td>0.1</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.004</td>
<td>Inductively Coupled Plasma</td>
<td>0.002(0.001)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; Plasma</td>
<td>0.0002^2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
<td>0.0003</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.005</td>
<td>Atomic Absorption; furnace technique</td>
<td>0.0001</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
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<td>--------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
<td>0.001</td>
</tr>
<tr>
<td>Chromium</td>
<td>0.1</td>
<td>Atomic Absorption; furnace technique</td>
<td>0.001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
<td>0.0007(0.001)</td>
</tr>
<tr>
<td>Cyanide</td>
<td>0.2</td>
<td>Distillation, Spectrophotometric$^3$</td>
<td>0.02</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Distillation, Automated Spectrophotometric$^3$</td>
<td>0.005</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Distillation, Selective Electrode$^3$</td>
<td>0.05</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Distillation, Amenable, Spectrophotometric$^4$</td>
<td>0.02</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.002</td>
<td>Manual Cold Vapor Technique</td>
<td>0.0002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Automated Cold Vapor Technique</td>
<td>0.0002</td>
</tr>
<tr>
<td>Nickel</td>
<td>0.1</td>
<td>Atomic Absorption; Furnace</td>
<td>0.001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; Platform</td>
<td>0.0006$^6$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
<td>0.005</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass Spectrometry</td>
<td>0.0005</td>
</tr>
<tr>
<td>Nitrate</td>
<td>10 (as N)</td>
<td>Manual Cadmium Reduction</td>
<td>0.01</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Automated Hydrazine Reduction</td>
<td>0.01</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Automated Cadmium Reduction</td>
<td>0.05</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ion Selective Electrode</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ion Chromatography</td>
<td>0.01</td>
</tr>
<tr>
<td>Nitrite</td>
<td>1 (as N)</td>
<td>Spectrophotometric</td>
<td>0.01</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Automated Cadmium Reduction</td>
<td>0.05</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Manual Cadmium Reduction</td>
<td>0.01</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ion Chromatography</td>
<td>0.004</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.05</td>
<td>Atomic Absorption; furnace</td>
<td>0.002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; gaseous hydride</td>
<td>0.002</td>
</tr>
<tr>
<td>Thallium</td>
<td>0.002</td>
<td>Atomic Absorption; Furnace</td>
<td>0.001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomic Absorption; Platform</td>
<td>0.0007$^7$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass Spectrometry</td>
<td>0.0003</td>
</tr>
</tbody>
</table>

MFL = million fibers per liter greater than ten (10) μm.

$^3$ Using a 2X preconcentration step as noted in EPA Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.

$^4$ Screening method for total cyanides.

$^5$ Measures "true" cyanides.

$^6$ Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

$^7$ The MDL reported for EPA Method 200.9, Atomic Absorption Platform—Stabilized Temperature, was determined using a 2X concentration step during sample digestion. The MDL determined for samples analyzed using direct analysis, or no sample digestion, will be higher. Using multiple determinations, EPA Method 200.9 is capable of obtaining a MDL of 0.0001 mg/L.

$^8$ Remanded MCL for nickel on February 9, 1995.

(b) If the population served by the system is greater than 3,300 persons, then compositing may occur only [be permitted] at sampling points within a single system. In a system that serves [systems serving] less than or equal to 3,300 persons, the cabinet may permit compositing among different systems if the five (5) sample limit is maintained.

(c) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates shall be analyzed by a certified laboratory [laboratories] and the results reported to the cabinet within fourteen (14) days after completing analysis of the composite sample, if the holding time is not exceeded [of collection].

(5)(a) The frequency of monitoring for asbestos shall be in accordance with Section 2 of this administrative regulation;

(b) The frequency of monitoring for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be in accordance with Section 3 of this administrative regulation;

(c) The frequency of monitoring for nitrate shall be in accordance with Section 4 of this administrative regulation; and

(d) The frequency of monitoring for nitrite shall be in accordance with Section 5 of this administrative regulation.

Section 2. Asbestos: The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in Section 12 of this administrative regulation shall be as follows:

1. Each community and nontransient[,] noncommunity water system shall monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the initial compliance period [starting January 1, 1993]

2. If the system believes it is not vulnerable to asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the cabinet for a waiver of the monitoring requirement in subsection (1) of this section. If the cabinet grants the waiver, the system is not required to monitor for asbestos pursuant to subsection (1) of this section.

3. The cabinet may grant a waiver of the monitoring requirement in subsection (1) of this section based on a consideration of the following factors:

(a) Potential asbestos contamination of the source water; and

(b) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

4. A waiver shall remain [remain] in effect until the completion of the three (3) year compliance period. A new waiver shall be requested and received for each compliance period. A system [Systems] not receiving a waiver shall monitor in accordance with the provisions of subsection (1) of this section.

5. A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

6. A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provisions of Section 1 of this administrative regulation.

7. A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

8. A system that [which] exceeds the maximum contaminant levels specified in Section 12 of this administrative regulation, as determined in Section 9 of this administrative regulation, shall monitor quarterly beginning in the next quarter after the violation occurred.

9. The cabinet may decrease the quarterly monitoring requirement to the frequency specified in subsection (1) of this section if the cabinet has determined that the system is reliably and consistently below the maximum contaminant level. This determination by the cabinet shall not be made unless a groundwater system takes a minimum of two (2) quarterly samples and a surface [or combined surface and ground][3]] water system takes a mini-
Section 3. Inorganic Contaminants other than Asbestos, Nitrate, and Nitrite. The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in Section 12 [1] of this administrative regulation for antracyclines, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be as follows: Groundwater systems shall sample (1) sample each at each sampling point once every three (3) years. Surface water systems, for combined surface and ground, (3) shall take one (1) sample annually at each sampling point.

A groundwater system (systeme) shall take one (1) sample at each sampling point during each compliance period (beginning in the compliance period starting January 1, 1993). A surface water system (systeme), or combined surface and groundwater system (systeme), shall take one (1) sample annually at each sampling point (beginning January 1, 1993).

The system may apply to the cabinet for a waiver from the monitoring frequencies specified in subsection (1) of this section. The cabinet may grant a waiver for cyanide or cyanate, if the cabinet determines that the system is not vulnerable due to lack of any industrial source of cyanate.

A public water system (systeme) shall take a minimum of one (1) sample while a waiver granted under subsection (2) of this section is effective. A waiver shall not be effective for more than one (1) compliance cycle (i.e., nine (9) years).

A waiver may be granted if surface water systems have been monitored annually for at least three (3) years and groundwater systems have conducted a minimum of three (3) rounds of monitoring. A system that uses a new source of water shall be granted a waiver if it has been monitored for at least one (1) year following the installation of the new source.

In determining the appropriate reduced monitoring frequency, the cabinet shall consider:
(a) Reported concentrations from all previous monitoring;
(b) The degree of variation in reported concentrations; and
(c) Other factors that may affect contaminant concentrations such as:
1. Changes in groundwater pumping rates;
2. Changes in the system's configuration;
3. Changes in the system's operating procedures;
4. Changes in stream flows or characteristics.

A decision by the cabinet to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the cabinet or upon an application by the system. The public water system shall specify the basis for its request. The cabinet shall review and, if appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency becomes available.

A system that exceeds the maximum contaminant levels as calculated in Section 9 of this administrative regulation shall comply with the maximum contaminant level for nitrate in Section 12 of this administrative regulation.

Surface water systems shall monitor annually (beginning January 1, 1993) for a maximum contaminant level of nitrate in Section 12 of this administrative regulation.

A community or nontransient noncommunity water system served by a groundwater system shall monitor annually and a community or nontransient noncommunity water system served by a surface water system shall monitor quarterly.

For a community or nontransient noncommunity water system served by a groundwater system, the repeat monitoring frequency for groundwater systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level. The system may allow a groundwater system to reduce the sampling frequency to annually after four (4) consecutive quarterly samples are reliably and consistently less than the maximum contaminant level.

For a community or nontransient noncommunity water system served by a surface water system, the repeat monitoring frequency for groundwater systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.

A system that is required by the cabinet to monitor annually shall take each subsequent sample during the quarter that the system collected the required number of samples.

A community or nontransient noncommunity water system shall demonstrate compliance with the maximum contaminant levels in Section 12 of this administrative regulation within a period of time specified by the cabinet.

A system that shall comply with the initial sampling frequencies specified by the cabinet to ensure that a system is able to demonstrate compliance with the maximum contaminant levels.

Routine and increased monitoring frequencies shall be conducted in accordance with the requirements of this administrative regulation.
previously resulted in the highest analytical result.

Section 6. Confirmation Sampling. (1) If the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium indicate an exceedance of the maximum contaminant level, the cabinet may require that one (1) additional sample be collected within two (2) weeks after the initial sample was taken at the same sampling point.

(2) If nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample. A public water system [system] unable to comply with the twenty-four (24) hour sampling requirement shall immediately notify the consumers served by the area served by the public water system in accordance with the requirements for a Tier 1 notice in 401 KAR 8:070. A system [Systems] exercising this option shall take and analyze a confirmation sample within two (2) weeks of notification of the analytical results of the first sample.

(3) If a confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with Section 9 of this administrative regulation. The cabinet may delete results of obvious sampling errors.

Section 7. The cabinet may require more frequent monitoring than specified in Sections 2 to 5 of this administrative regulation or may require confirmation samples for positive and negative results, if necessary to ensure the protection of public health.

Section 8. Public water systems may apply to the cabinet to conduct more frequent monitoring than the minimum monitoring frequencies specified in this administrative regulation.

Section 9. Compliance Determinations. Compliance with Section 12 of this administrative regulation shall be determined based on the analytical result obtained at each sampling point.

(1) For a system that is [systems which are] conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium shall be determined by a running annual average at any sampling point. If the average at any sampling point is greater than the maximum contaminant level, then the system shall be deemed to be out of compliance. If any one (1) sample would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance or the average concentration shall be based on the total number of samples collected.

(2) For a system that is [systems which are] monitoring annually, or less frequently, the system shall be deemed to be out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium if the level of a contaminant at any sampling point is greater than the maximum contaminant level. If a confirmation sample is required by the cabinet, the determination of compliance shall [will] be based on the average of the two (2) samples. If a system fails to collect the required number of samples, compliance or the average concentration shall be based on the total number of samples collected.

(3) Compliance with the maximum contaminant levels for nitrate and nitrite shall be [are] determined based on one (1) sample if the levels of these contaminants are [are] below the maximum contaminant levels. If the levels of nitrate or nitrite exceed the maximum contaminant levels in the initial sample, the system shall take and submit a confirmation sample [as required] in accordance with Section 6(2) of this administrative regulation, and compliance shall be determined based on the average of the initial and confirmation samples.

(4) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(5) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the cabinet may allow the system to give public notice to only the area served by that portion of the system that [which] is out of compliance.

Section 10. Each public water system shall monitor at the times [time] designated by the cabinet during each compliance period, as specified in writing to the public water system.


Section 12. Maximum Contaminant Levels. The maximum contaminant levels for inorganic contaminants specified in subsections (6), (10), and (11) to (15) of this section shall apply to community water systems and nontransient[,] noncommunity water systems. The maximum contaminant levels specified in subsections (1) and (16) of this section shall apply only to community water systems. The maximum contaminant levels specified in subsections (6), (9), and (10) of this section shall apply to community water systems, [6] nontransient[,] noncommunity water systems, [3] and transient noncommunity water systems.

<table>
<thead>
<tr>
<th>CONTAMINANT</th>
<th>MAXIMUM CONTAMINANT LEVEL (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fluoride</td>
<td>4.0</td>
</tr>
<tr>
<td>Asbestos</td>
<td>7 Million Fibers/liter (longer than 10 micrometers)</td>
</tr>
<tr>
<td>Barium</td>
<td>2.0</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.005</td>
</tr>
<tr>
<td>Chromium</td>
<td>0.002</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.002</td>
</tr>
<tr>
<td>Nitrate</td>
<td>10 (as Nitrogen)</td>
</tr>
<tr>
<td>Nitrite</td>
<td>10 (as Nitrogen)</td>
</tr>
<tr>
<td>Total Nitrate and Nitrite</td>
<td>10 (as Nitrogen)</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.05</td>
</tr>
<tr>
<td>Antimony</td>
<td>0.006</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.004</td>
</tr>
<tr>
<td>Cyanide, ([as free Cyanide])</td>
<td>0.2</td>
</tr>
<tr>
<td>Nickel</td>
<td>EPA recommended MCL February 1995 [0.01]</td>
</tr>
<tr>
<td>Thallium</td>
<td>0.002</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.05, until January 23, 2006 0.010, on or after January 23, 2008</td>
</tr>
</tbody>
</table>

Section 13. Best Available Technology. The following shall be [are] hereby identified as the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant levels for inorganic contaminants identified in Section 12 of this administrative regulation, except fluoride:

<table>
<thead>
<tr>
<th>BAT FOR INORGANIC COMPOUNDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHEMICAL NAME</td>
</tr>
<tr>
<td>Antimony</td>
</tr>
<tr>
<td>Arsenic</td>
</tr>
<tr>
<td>Asbestos</td>
</tr>
<tr>
<td>Barium</td>
</tr>
<tr>
<td>Beryllium</td>
</tr>
<tr>
<td>Cadmium</td>
</tr>
<tr>
<td>Chromium</td>
</tr>
<tr>
<td>Cyanide</td>
</tr>
<tr>
<td>Mercury</td>
</tr>
<tr>
<td>Nickel</td>
</tr>
<tr>
<td>Nitrate</td>
</tr>
<tr>
<td>Nitrite</td>
</tr>
</tbody>
</table>
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Selenium 1.2, 6.7, 9
Thallium 1.5

BAT only if influent Hg concentrations are less than or equal to 10 μg/l.
BAT for Chromium III only.
BAT for Selenium IV only.
*BAT for Arsenic V, Preoxidation may be required to convert Arsenic III to Arsenic V.
*To obtain high removals, iron to arsenic ratio shall be at least 20:1.

KEY TO BATS IN TABLE

1 = Activated Alumina
2 = Coagulation and Filtration
3 = Direct and Diatomite Filtration
4 = Granular Activated Carbon
5 = Ion Exchange
6 = Lime Softening
7 = Reverse Osmosis
8 = Corrosion Control
9 = Electrodialysis
10 = Chlorine
11 = Ultraviolet

Section 14, Affordable Technology. The following table identifies the affordable technology, treatment technique, or other means available to systems serving ten thousand (10,000) or fewer persons for achieving compliance with the maximum contaminant level for arsenic as Section 12 of this administrative regulation.

<table>
<thead>
<tr>
<th>Small System Compliance Technology for Arsenic</th>
<th>Affordable for listed small systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activated Alumina, centralized</td>
<td>All size categories</td>
</tr>
<tr>
<td>Activated Alumina, point-of-use*</td>
<td>All size categories</td>
</tr>
<tr>
<td>Coagulation, Filtration*</td>
<td>501 - 3,300: 3301 - 10,000</td>
</tr>
<tr>
<td>Coagulation-assisted Microfiltration*</td>
<td>501 - 3,300: 3301 - 10,000</td>
</tr>
<tr>
<td>Electrodialysis reversal*</td>
<td>501 - 3,300: 3301 - 10,000</td>
</tr>
<tr>
<td>Enhanced coagulation, filtration</td>
<td>All size categories</td>
</tr>
<tr>
<td>Enhanced lime softening, pH+10.5</td>
<td>All size categories</td>
</tr>
<tr>
<td>Ion Exchange</td>
<td>All size categories</td>
</tr>
<tr>
<td>Lime Softening*</td>
<td>501 - 3,300: 3301 - 10,000</td>
</tr>
<tr>
<td>Oxidation, Filtration*</td>
<td>All size categories</td>
</tr>
<tr>
<td>Reverse Osmosis, centralized*</td>
<td>501 - 3,300: 3301 - 10,000</td>
</tr>
<tr>
<td>Reverse Osmosis, point-of-use*</td>
<td>All size categories</td>
</tr>
</tbody>
</table>

*Small system compliance technologies shall be affordable and technically feasible for small systems.
*Small system compliance technologies for Arsenic V, Preoxidation may be required to convert Arsenic III to Arsenic V.
*Three (3) categories of small systems: those serving more than twenty-five (25) but fewer than 501; those serving more than 500 but fewer than 3,301; and those serving more than 3,300 but fewer than 10,001.
*If point of use or point of entry devices are used for compliance, the programs to ensure proper long-term operation, maintenance, and monitoring shall be provided by the system to ensure adequate performance.
*Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.
*Technologies reject a large volume of water. May not be appropriate for areas where water quantity may be an issue.
*To obtain high removals, iron to arsenic ratio shall be at least 20:1.

Section 15, Special Monitoring for Sodium. (1) Those required to sample. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.

(2) Sampling frequency. Community water systems, surface source. A system that uses [Surface-utilizing] surface water sources in whole or in part shall collect and analyze samples semianually. Samples shall be collected once (1) time during the wet season and one (1) time during the dry season per calendar year.

(b) Community water systems, groundwater sources. A system that uses [Surface-utilizing] only groundwater sources shall collect and analyze samples annually.

(c) Samples required. The minimum number of samples required to be taken by the system shall be based upon the number of treatment plants used by the system, the system may consider multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for the purpose of determining the minimum number of samples. The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(d) Analyses for sodium shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency in 40 C.F.R. 141.23(k), January 25, 2003 [in-effect on July 1, 1996, hereby adopted without change].

(3) Reporting. The supplier of water shall report to the cabinet the results of the analyses for sodium within ten (10) days of the end of the month in which the sample results were received or within ten (10) days following the end of the required monitoring period, as determined by the cabinet, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within ten (10) days of the end of the month in which the analytical results of the last sample used for the annual average was received.

(4) Acceptable sodium limits. A level of twenty (20) mg/l of sodium shall be considered an optimum concentration for drinking water. The supplier of water shall notify appropriate local and state public health officials of the sodium levels, by written notice by direct mail, within three (3) months of testing. A copy of each notice required to be provided by this subsection shall be sent to EPA and the cabinet within ten (10) days of issuance. The supplier of water shall not be required to notify appropriate local and state public health officials of the sodium levels where the state provides the notice in lieu of the supplier.

(5) Public notification. The provisions of 401 KAR 8 070 shall [de] not apply to sodium levels unless the water supplier chooses [select] to notify the public.

Section 16, [46] Variance and Exemptions for Fluoride. In addition to the requirements for requesting a variance or exemption provided in 401 KAR 8 060, the following provisions shall be [are] applicable if a variance or exemption from the maximum contaminant level for fluoride is requested:

(1) Best available technology. The following are the best available technology, treatment techniques or other means generally available for achieving compliance with the maximum contaminant level for fluoride:

(a) Activated alumina absorption, centrally applied; and
(b) Reverse osmosis, centrally applied.

(2) Public water systems shall apply the best available technology, treatment techniques, or other means generally available to the water system and specified in subsection (1)(a) or (b) of this section, prior to the cabinet's consideration of a variance request for fluoride, unless:

(a) Pursuant to 401 KAR 8 060, the public water system submits to the cabinet information, based upon studies of the public water system and other relevant information, that demonstrates that the technology, treatment technique or other available means identified in subsection (1)(a) of this section is not available and effective for the public water system; and

(b) The cabinet determines, based upon the information submitted, that the best available technology, treatment technique or other means generally available is not available and effective for the system.

(3) Prior to granting a variance, the cabinet shall issue a compliance schedule that [which] requires the public water system to examine the following treatment techniques to determine the probability that any of these methods will significantly reduce the level of fluoride for that system, and, if so, to determine if those methods are technically feasible and economically reasonable; and to determine if the fluoride reductions obtained are commensurate with
the costs incurred with the installation and use of the treatment methods for that system:
(a) Modification of lime softening;
(b) Alum coagulation;
(c) Electrodiagnosis;
(d) Anion exchange resins;
(e) Well field management;
(f) Alternate source; and
(g) Regionalization.

(4) If the cabinet determines that a treatment technique identified in subsection (3) of this section is technically feasible, economically reasonable and will achieve fluoride reductions commensurate with costs incurred with the installation and use of the treatment technique for the public water system, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule issued pursuant to 401 KAR 8:060.

Section 17. Nitrate Exemption. A noncommunity water system may exceed the maximum contaminant level for nitrates, but shall not exceed twenty (20) mg/L, if the system demonstrates to the satisfaction of the cabinet that the conditions of subsections (1) to (4) of this section shall be met: A monitoring value above twenty (20) mg/L, or if a condition of this section is not met for monitoring values above ten (10) mg/L, shall be considered a violation.

(1) The water shall not be available to children under six (6) months of age.

(2) The noncommunity water system shall notify the public according to the requirements for a Tier 1 notification in 401 KAR 8:070, including continuous posting.

(3) The water system shall notify local and state health officials of the exceedance, and

(4) No adverse health effects shall result.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006

FILED WITH LRC: November 14, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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 January 2, 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: Justin Dearinger, Regulations Coordinator
Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation prescribes maximum contaminant levels and sampling and analytical requirements for inorganic chemicals, which are regulated by the U.S. Environmental Protection Agency in 40 C.F.R. Part 141.
(b) The necessity of this administrative regulation: This regulation is necessary so that Kentucky can continue to maintain privacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulations for inorganic chemicals in various sections in 40 C.F.R. Part 141.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation will be consistent with the federal regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the cabinet and supports Kentucky's comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment to the regulation will allow a provision for certain noncommunity water systems to exceed the standard for nitrates under specified conditions. This exemption is allowed if babies normally do not have access to the water provided by the system. An example of such a system would be a prison. This exemption is allowed under the federal regulation, and it is being incorporated into Kentucky's regulation to be consistent with the federal regulation.
(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation will include a new maximum contaminant level for arsenic, which was promulgated by the U.S. Environmental Protection Agency in 2001, and becomes effective in 2006. In addition, new standard and sampling and analytical requirements for arsenic are also prescribed by the federal regulation, and are being incorporated into Kentucky's regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the regulation is consistent with the federal regulations.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide necessary updates to the current regulation, and allow Kentucky to maintain privacy for the implementation and enforcement on the federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every community and nontransient noncommunity water system is subject to the standards for inorganic chemicals. The provisions relating to nitrates and nitrites apply also to transient noncommunity water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public water systems are required to meet the standards identified in the amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be an initial cost associated with the modification of public water treatment systems.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (6): Public Water Systems meeting the requirements of this amendment would ensure the quality of the water provided to the public and avoid any resulting non-compliance actions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None anticipated.
(b) On a continuing basis: None anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees established, either directly or indirectly.
(9) TIERING: Is tiering applied? Yes. Due to the federal definitions of various sized public water systems and how the regulation applies to each, it is necessary to address various size systems.
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differently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.11, 141.23, 141.41, 141.62, and U.S.C. 300f, 300g, 300h, 300j.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. This amendment to the regulation is consistent with the federal regulations.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.11, 141.23(k), 141.41, 141.62, & 42 U.S.C. Chapter 6A Subchapter XII.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? None
   (d) How much will it cost to administer this program for subsequent years? None.
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-): None anticipated. Expenditures (+/-): None anticipated. Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection by-product precursors.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. [141.40-141.44] 142.60

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. [141.23] 141.30, 141.64, 141.65, 141.100-141.135, [141.40-141.44] 142 U.S.C. Chapter 6A Subchapter XII [300f, 300g, 300h, 300j].

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 require the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the maximum contaminant levels for total trihalomethanes and halocarboxic acid (c) to limit the levels of known and unknown disinfection by-products.

Section 1. Applicability. (1) This administrative regulation shall be considered a national primary drinking water regulation.
(2) This administrative regulation establishes criteria under which:
(a) A community water system or [and] a nontransient noncommunity water system that adds [adds] a chemical disinfectant as a part of the drinking water treatment process shall:
1. Modify its [their] practices to meet maximum contaminant levels, or MCLs, and maximum residual disinfectant levels, or MRDLs, in Section 3 of the administrative regulation; and
2. Meet the treatment technique requirements for disinfection-by-product precursors in Section 9 of this administrative regulation; and
(b) A transient noncommunity water system that uses chlorine dioxide as a disinfectant or oxidant shall modify its practices to meet the MRDL for chlorine dioxide in Section 3 of this administrative regulation.
(3) This administrative regulation establishes MCLs for TTHM and HAAS and treatment technique requirements for disinfection by-product precursors to limit the levels of known and unknown disinfection by-products, which may have adverse health effects.
(4) Control of disinfectant residuals. The cabinet recognizes that the addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs in Section 3 of this administrative regulation, a system may increase the residual disinfectant level in the distribution system of chlorine or chloramines, but not chlorine dioxide, to a level and for the amount of time necessary to protect public health, to address a specific microbiological contamination problem caused by circumstances such as:
(a) A distribution line break;
(b) Storm run-off event;
(c) Source water contamination event; or
(d) Cross-connection event.

Section 2. Compliance Dates. (1) Community water system and nontransient noncommunity water system. Unless otherwise noted, a community water system or [and] a nontransient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation [by the date indicated as follows]:
(a) If the system serves 10,000 or more persons: Beginning January 1, 2002;
(b) If the system serves fewer than 10,000 persons: If the system uses only groundwater not under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:
(a) If the system serves 10,000 or more persons and uses chlorine dioxide as a disinfectant or oxidant: Beginning January 1, 2002; and
(b) If the system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, or the system uses only underground not under the direct influence of surface water and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2004.
(2) Transient noncommunity water system. [Unless otherwise noted:] A transient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:
(a) If the system serves 10,000 or more persons and uses chlorine dioxide as a disinfectant or oxidant: Beginning January 1, 2002; and
(b) If the system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, or the system uses only groundwater not under the direct influence of surface water and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2004.

(3) [A system that is installing GAC or membrane technology to comply with the MCLs for disinfection by-products may apply to the cabinet for an extension of time up to twenty-four (24) months past the date in subsections (1) and (2) of this section, but not beyond December 31, 2003. In granting the extension, the cabinet shall set a schedule for compliance and may specify any interim measure that the system shall take. Failure to meet the schedule or interim treatment requirements shall constitute a violation of the administr-
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(4) Consecutive systems. Consecutive water systems shall monitor for trihalomethanes and HAAS as follows:

(a) For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

(b) Producers.

1. A public water system that produces water and that provides water to another system shall be responsible for monitoring throughout the joint distribution system, which shall consist of the distribution systems of both the producing system and all purchasing systems. Monitoring shall be performed pursuant to this administrative regulation at a point in the joint distribution system that reflects the longest period of retention.

2. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system’s water. A monitoring plan for total trihalomethanes and HAASs shall be submitted by all producing systems and shall be approved by the cabinet pursuant to Section 6(6) of this administrative regulation.

(c) Purchasers.

1. A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for TTHM or HAAS anywhere in its distribution system. The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination, and shall be approved by the cabinet before the altered practices begin.

2. A purchasing system shall cooperate in the development of a monitoring plan required from the producing system under paragraph (b) of this subsection. A purchasing system shall monitor for maximum residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled as specified in 401 KAR 8.200.

Section 3. Maximum Levels. (1) Maximum contaminant level. The maximum contaminant level or MCL for disinfection by-products shall be:

(a) Total trihalomethanes, or TTHMs: 0.090 mg/L;

(b) Haloacetic acids, or HAAS: 0.060 mg/L;

(c) Bromate: 0.010 mg/L; and

(d) Chlorite: one and zero-tenths (1.0) mg/L.

(2) Maximum residual disinfectant level.

(a) The maximum residual disinfectant level, or MRDL, shall be:

1. Chlorine: four and zero-tenths (4.0) mg/L as Cl₂;

2. Chloramines: four and zero-tenths (4.0) mg/L as Cl₂;

3. Chlorine dioxide: zero and eight-tenths (0.8) mg/L as ClO₂;

(b) For chlorine and chloramines, a public water system shall be in compliance with the MRDL if the running annual average of monthly averages of samples taken in the distribution system computed quarterly is less than or equal to the MRDL.

2. For chlorine dioxide, a public water system shall be in compliance with the MRDL if daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL.

(c) The MRDL shall be enforceable in the same manner as are maximum contaminant levels.

Section 4. Best Available Technology. (1) Disinfection by-products. The following shall be the best technology, treatment techniques, or other means available for achieving compliance with the MCLs for disinfection by-products in Section 3 of this administrative regulation:

(a) TTHM: Enhanced coagulation or enhanced softening or GAC-10, with chlorine as the primary and residual disinfectant;

(b) HAAS: Enhanced coagulation or enhanced softening or GAC-10, with chlorine as the primary and residual disinfectant;

(c) Bromate: Control of ozone treatment process to reduce production of bromate; and

(d) Chlorite: Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

(2) Disinfectant residuals. The best technology, treatment techniques, or other means available for achieving compliance with the MFRDL in Section 3 of this administrative regulation shall be:

(a) Control of treatment processes to reduce disinfectant demand, and

(b) Control of disinfection treatment processes to reduce disinfectant levels.

Section 5. Analytical Requirements. (1) Except as provided in this section, a system shall sample and analyze according to the procedures in 40 C.F.R. 141.131 [January 16, 2001] adopted without change in Section 10 of this administrative regulation.

(2) A system shall have the samples analyzed by a laboratory that has been certified by the U.S. Environmental Protection Agency or the cabinet according to 401 KAR 8.040.

(3) A party approved by the U.S. Environmental Protection Agency or the cabinet shall measure daily chlorine samples at the entrance to the distribution system.

(4) A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using a N.N.-diethyl-p-phenylenediamine (DPD) colorimetric test kit.

(5) Residual disinfectant concentrations, alkalinity, and total organic carbon (TOC), specific ultraviolet absorbance (including dissolved organic carbon and UV-254) and pH shall be measured by an operator certified pursuant to 401 KAR 8.030, or a person under the direct supervision of a certified operator, or a certified laboratory pursuant to 401 KAR 8.040.

Section 6. Monitoring Requirements. (1) General requirements.

(a) A system shall take all samples during normal operating conditions.

(b) A system may consider multiple wells drawing water from a single aquifer as one (1) treatment plant for determining the minimum number of TTHM and HAAS samples required, as approved by the cabinet.

(c) Failure to monitor in accordance with the monitoring plan required in subsection (6) of this section shall be a monitoring violation.

(d) Failure to monitor shall be [treated-as] a violation for the entire period covered by the annual average, if compliance is based on a running annual average of monthly or quarterly samples or averages and the system’s failure to monitor makes it impossible to determine compliance with an MCL or MFRDL.

(e) To qualify for reduced monitoring, a system shall use only data collected under the provisions of the administrative regulation or 40 C.F.R. 141.140 to 141.144.

(2) Monitoring requirements for disinfection by-products.

(a) TTHMs and HAAS.

1. Routine monitoring. A system shall monitor at the frequency and locations indicated in the following table:

<table>
<thead>
<tr>
<th>System Type</th>
<th>Minimum monitoring frequency</th>
<th>Sample location in the distribution system</th>
</tr>
</thead>
<tbody>
<tr>
<td>A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves at least 10,000 persons</td>
<td>Four (4) water samples per quarter per treatment plant.</td>
<td>At least twenty-five (25) percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples shall be taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account the number of persons served, different sources of water, and different treatment methods.</td>
</tr>
</tbody>
</table>
A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves from 500 to 9,999 persons, if the sample, or average of annual samples, if more than one sample is taken, exceeds the MCL, system shall increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in subparagraph 4 of this paragraph.

System using only groundwater not under direct influence of surface water, using chemical disinfectant, and serving at least 10,000 persons.

One (1) water sample per quarter per treatment plant.

Location representing maximum residence time.

If a system elects to sample more frequently than the minimum required, at least twenty-five (25) percent of all samples collected each quarter, including those taken in excess of the required frequency, shall be taken at locations that represent the maximum residence time in the distribution system. The remaining samples shall be taken at locations representative of at least average residence time in the distribution system.

Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the number of samples required.

2. A system may reduce monitoring, except as otherwise provided, in accordance with the following table:

<table>
<thead>
<tr>
<th>Reduced Monitoring Frequency for THM and HAAS</th>
<th>If the system type is</th>
<th>And the system has monitored at least one (1) year and the</th>
<th>Then the system may reduce monitoring to this level</th>
</tr>
</thead>
<tbody>
<tr>
<td>System that uses as its source surface water or groundwater under the direct influence of surface water, that serves at least 10,000 persons, and that has a source water annual average TOC level, before treatment, of ≤4.0 mg/L.</td>
<td>TTHM annual average ≤0.040 mg/L and HAAS annual average ≤0.030 mg/L.</td>
<td>One (1) sample per treatment plant per quarter at distribution system location reflecting maximum residence time.</td>
<td></td>
</tr>
<tr>
<td>System that uses as its source surface water or groundwater under the direct influence of surface water that serves from 500 to 9,999 persons, and that has a source water annual average TOC level, before treatment, of ≤4.0 mg/L.</td>
<td>TTHM annual average ≤0.040 mg/L and HAAS annual average ≤0.030 mg/L.</td>
<td>One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. A system that uses as its source surface water or groundwater under the direct influence of surface water that serves fewer than 500 persons shall not reduce its monitoring to less than one (1) sample per treatment plant per year.</td>
<td></td>
</tr>
<tr>
<td>System using only groundwater not under direct influence of surface water, using chemical disinfectant, and serving at least 10,000 persons.</td>
<td>TTHM annual average ≤0.040 mg/L and HAAS annual average ≤0.030 mg/L.</td>
<td>One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.</td>
<td></td>
</tr>
<tr>
<td>System using only groundwater not under direct influence of surface water, using chemical disinfectant, and serving fewer than 10,000 persons.</td>
<td>TTHM annual average ≤0.040 mg/L and HAAS annual average ≤0.030 mg/L.</td>
<td>One (1) sample per treatment plant per three (3) year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three (3) year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.</td>
<td></td>
</tr>
</tbody>
</table>

3. A system on a reduced monitoring schedule may remain on that reduced schedule if the average of all samples taken in the year, for systems that shall monitor quarterly, or the result of the sample, for systems that shall monitor no more frequently than annually, is not more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAAS, respectively. A system that does not meet these levels shall resume monitoring at the frequency identified in the sample location column in subparagraph 1 of this paragraph immediately following the quarter in which the system exceeds 0.060 mg/L for TTHM and 0.045 mg/L for HAAS. For a system that uses only groundwater not under the direct influence of surface water and that serves fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAAS annual average is >0.060 mg/L, the system shall go to increased monitoring identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.060 mg/L for HAAS.

4. A system on increased monitoring may return to routine monitoring if the TTHM annual average is ≤0.040 mg/L and HAAS annual average is ≤0.030 mg/L.

5. The cabinet may return a system to routine monitoring.

(b) Chlorite. A community [gas] and nontransient noncommunity water system using chlorine dioxide for disinfection or oxidation shall conduct monitoring for chlorite.

1. Routine monitoring.

A. Daily monitoring. A system shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system the following day at the locations required...
by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system. 

b. Monthly monitoring. A system shall take a three (3) sample set each month in the distribution system. Additional routine sampling shall be conducted in the same manner as three (3) sample sets, at the specified locations. The system may use the results of additional monitoring conducted under subparagraph 2 of this paragraph to meet the requirement for monitoring in this clause. The system shall take one (1) sample at each of the following locations:
   i. Near the first customer;
   ii. At a location representative of average residence time; and
   iii. At a location reflecting maximum residence time in the distribution system. 

2. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorine MCL at the entrance to the distribution system, the system shall take three (3) chlorine distribution samples at the following locations:
   a. As close to the first customer as possible;
   b. In a location representative of average residence time; and
   c. As close to the end of the distribution system as possible, to reflect maximum residence time in the distribution system. 

3. Reduced monitoring
   a. Chlorine monitoring at the entrance to the distribution system required by subparagraph 1a of this paragraph shall not be reduced.
   b. Chlorine monitoring in the distribution system required by subparagraph 1b of this paragraph may be reduced to one (1) three (3) sample per quarter after one (1) year of monitoring if no individual chlorine sample taken in the distribution system under subparagraph 1b of this paragraph has exceeded the chlorine MCL and the system has not been required to conduct monitoring under subparagraph 2 of this paragraph. The system may remain on the reduced monitoring schedule until either any of the three (3) individual chlorine samples taken quarterly in the distribution system under subparagraph 1b of this paragraph exceed the chlorine MCL or the system is required to conduct monitoring under subparagraph 2 of this paragraph. The system shall then revert to routine monitoring.
   c. Bromate.
   1. Routine monitoring. A community or [and] nontransient noncommunity water system using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system that uses ozone. A system shall take the sample monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.
   2. Reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based on representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L, based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system shall resume routine monitoring required by subparagraph 1 of this paragraph.

(3) Monitoring requirements for disinfectant residuals.
(a) Chlorine and chloramines.
   1. Routine monitoring. A community or [and] nontransient noncommunity water system that uses chlorine or chloramines shall measure the residual disinfectant level in the distribution system at the same time as total coliforms are sampled, as specified in 401 KAR 6.200.
   2. Reduced monitoring Monitoring shall not be reduced.
   (b) Chlorine dioxide.
   1. Routine monitoring. A community, nontransient noncommunity or [and] transient noncommunity water system that uses chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the MRLD, the system shall take samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.
   2. Additional monitoring. Each day following a routine sample monitoring result that exceeds the MRLD, the system shall take three (3) chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, chlorine dioxide or chloramines is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, i.e., there is no booster chlorination, the system shall take one (1) sample at each of the following locations:
   a. As close to the first customer as possible;
   b. In a location representative of average residence time; and
   c. As close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system. 
   3. Reduced monitoring Chlorine dioxide monitoring shall not be reduced.
   (a) Routine monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall monitor each treatment plant for total trihalomethanes (TTHMs) and total haloacetic acids (HAAs) at the point of combined filter effluent turbidity monitoring and representative of the treated water. A system required to monitor under this paragraph shall also monitor for TOC in the source water before any treatment at the same time as monitoring for TOC in the treated water. These samples of the source water and treated water shall be considered paired samples. When the source water samples are taken, a system shall monitor for alkalinity in the source water before any treatment. A system shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a representative of normal operating conditions and influent water quality.
   (b) Reduced monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than two and zero-tenths (2.0) mg/L for two (2) consecutive years, or less than one and zero-tenths (1.0) mg/L for one (1) year, may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plan per quarter. The system shall revert to routine monitoring in the month following the quarter if the annual average treated water TOC is greater than or equal to two and zero-tenths (2.0) mg/L.
   (5) Bromide. A system required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based on representative monthly measurements for one (1) year. The system shall continue bromate monitoring to remain on reduced bromate monitoring.

(6) Monitoring plan. A system required to monitor under this administrative regulation shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the cabinet and the general public no later than thirty (30) days following the applicable compliance dates in Section 2 of this administrative regulation. A system that uses as its source surface water or groundwater under the direct influence of surface water serving more than 3,300 people shall submit a copy of the monitoring plan to the cabinet no later than the date of the first report required by Section 8 of this administrative regulation. The cabinet may also require another system to submit the plan. After review, the cabinet may require changes in a plan element. The monitoring plan shall include at least the following elements:
   a. Specific location and schedule for collecting samples for a parameter included in this administrative regulation;
   b. How the system will calculate compliance with MCLs, MRLDs, and treatment techniques; and
   c. If providing water to a consecutive system, the sampling plan for TTHMs and HAAs shall reflect the entire distribution system.
Section 7. Compliance Requirements. (1) General requirements.

(a) If compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAAS, or bromate, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

2. If compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

(b) A sample taken and analyzed under the provisions of this administrative regulation shall be included in determining compliance, even if the number of samples taken is greater than the minimum required.

(c) If during the first year of monitoring under Section 6 of this administrative regulation, an individual quarter's average causes or will cause the running annual average of that system to exceed the MCL, the system shall be out of compliance at the end of that quarter.

(2) Disinfection by-products.

(a) THMVs and HAAS. 1. For a system that monitors quarterly, compliance with MCLs in Section 3 of this administrative regulation shall be based on a running quarterly average of the quarterly arithmetic averages of the samples collected by the system as prescribed by Section 6(2)(a) of this administrative regulation.

2. For a system monitoring less than quarterly, a system shall demonstrate MCL compliance if the average of samples taken that year under the provisions of Section 6(2)(a) of this administrative regulation does not exceed the MCLs in Section 3 of the administrative regulation. If the average of the samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant, and the system shall not be [eneid] in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system shall be [eneid] in violation at the end of that quarter. A system required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample that triggered the increased monitoring, plus the following three (3) quarters of monitoring.

3. If the running annual arithmetic average of quarterly averages covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070. In addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

4. A public water system fails to complete four (4) consecutive quarterly monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(b) Bromate. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples, or for months in which the system takes more than one (1) sample, the average of the samples taken during the month, collected by the system as prescribed by Section 6(2)(c) of this administrative regulation. If the average of samples covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. If a public water system fails to complete twelve (12) consecutive months' monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(c) Chlorite. Compliance shall be based on an arithmetic average of each three (3) sample set taken in the distribution system as prescribed by Section 6(2)(d) of this administrative regulation. If the arithmetic average of a three (3) sample set exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(3) Disinfectant residuals.

(a) Chlorine and chloramines.

1. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under Section 6(3)(a) of this administrative regulation. If the average covering a consecutive four (4) quarter period exceeds the MRDL, the system shall be in violation of the MRDL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. If a system switched between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including all monitoring results of both chlorine and chloramines in calculating compliance. A report submitted pursuant to Section 8 of this administrative regulation shall clearly indicate which residual disinfectant was analyzed for each sample.

(b) Chlorine dioxide.

1. Acute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If a daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (1) or more of the three (3) samples taken in the distribution system exceed the MRDL, the system shall be in violation of the MRDL. The system shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to the procedures for acute health risks in 401 KAR 8:070, Section 1(2)(d), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. Nonacute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system shall be in violation of the MRDL and the system shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for nonacute health risks in 401 KAR 8:070, Section 1(2)(d), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(4) Disinfection by-product precursors. Compliance shall be determined as specified by Section 9(3) of this administrative regulation. A system may begin monitoring to determine if Step 1 TCC removals will be able to be met twelve (12) months before the compliance date for the system. This monitoring is not required, and failure to monitor during this period shall not be a violation. However, a system that does not monitor during this period then determines [determined] in the first twelve (12) months that it is not able to meet the Step 1 requirements in Section 9(2)(b) of this administrative regulation and shall therefore apply for alternate minimum TCC removal or Step 2 requirements, shall not be eligible for retroactive approval of Step 2 requirements, as allowed pursuant to Section 9(2)(c) of this administrative regulation, and shall be in violation. A system may apply for Step 2 requirements after the compliance date. For a system required to meet Step 1 TCC removals, if the value calculated under Section 9(3)(a) of this administrative regulation for the system is below 1.0, the system shall be in violation of the treatment technique requirements and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

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Section 8. Reporting and Recordkeeping Requirements. This section prescribes the reporting and record keeping requirements. A system required to sample quarterly or more frequently shall report to the cabinet within ten (10) days after the end of each quarter in which samples were collected; notwithstanding the provisions of 401 KAR 6:020. A system required to sample less frequently than quarterly shall report to the cabinet within ten (10) days after the end of each monitoring period in which samples were collected.

(2) Disinfection by-products.
(a) A system monitoring for TTHM and HAA5 under the requirements of Section 6(2) of this administrative regulation on a quarterly or more frequent basis shall report:
1. The number of samples taken during the last quarter; and
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of all samples taken in the last quarter;
4. The annual arithmetic average of the quarterly arithmetic average of this section for the last four (4) quarters; and
5. If the MCL was violated [exceeded] or not, based on Section 7(2)(a) of this administrative regulation.
(b) A system monitoring for TTHMs and HAA5 under the requirements of Section 6(2) of this administrative regulation less frequently than quarterly, but at least annually, shall report:
1. The number of samples taken during the last year;
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of all samples taken over the last year; and
4. If the MCL was violated [exceeded] or not, based on Section 7(2)(a) of this administrative regulation.
(c) A system monitoring for TTHMs and HAA5 under the requirements of Section 6(2) of this administrative regulation less frequently than annually shall report:
1. The location, date, and result of the last sample taken; and
2. If the MCL was violated [exceeded] or not, based on Section 7(2)(a) of this administrative regulation.
(d) A system monitoring for chlorine under the requirements of Section 6(2) of this administrative regulation shall report:
1. The number of samples taken each month for the last three (3) months;
2. The location, date, and result of each sample taken during the last quarter;
3. For each month in the reporting period, the arithmetic average of all samples taken in the month; and
4. If the MCL was violated [exceeded] or not, based on Section 7(2)(c) of this administrative regulation, in which months it was violated [exceeded], and how many times it was violated each month.
(e) A system monitoring for bromate under the requirements of Section 6(2) of this administrative regulation shall report:
1. The number of samples taken during the last quarter;
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year; and
4. If the MCL was exceeded or not, based on Section 7(2)(b) of this administrative regulation.

(3) Disinfectants.
(a) A system monitoring for chlorine or chloramines under the requirements of Section 6(3) of this administrative regulation shall report:
1. The number of samples taken during each month of the last quarter;
2. The monthly arithmetic average of all samples taken in each month for the last twelve (12) months;
3. The arithmetic average of all monthly averages for the last twelve (12) months; and
4. If the MRDL was exceeded or not, based on Section 7(3)(a) of this administrative regulation.
(b) A system monitoring for chlorine dioxide under the requirements of Section 6(3) of this administrative regulation shall report:
1. The dates, results, and locations of samples taken during the last quarter;
2. If the MRDL was exceeded or not, based on Section 7(3)(b) of this administrative regulation; and
3. If the MRDL was exceeded or not in any two (2) consecutive daily samples and if the resulting violation was acute or nonacute.
4. Disinfection by-product precursors and enhanced coagulation or enhanced softening.
(a) A system monitoring monthly or quarterly for TOC under the requirements of Section 6(4) of this administrative regulation and that shall meet the enhanced coagulation or enhanced softening requirements in Section 8(2)(b) or (c) of this administrative regulation shall report:
1. The number of paired samples taken during the last quarter;
2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal;
4. Calculations for determining compliance with the TOC percent removal requirements, as provided in Section 9(3)(a) of this administrative regulation and
5. If the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in Section 9(2) of this administrative regulation for the last four (4) quarters.
(b) A system monitoring monthly or quarterly for TOC under the requirements of Section 6(4) of this administrative regulation and meeting one (1) or more of the alternative compliance criteria in Section 9(1)(b) or (c) of this administrative regulation shall report:
1. The alternative compliance criterion that the system is using;
2. The number of paired samples taken during the last quarter;
3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
4. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water TOC for a system meeting the criterion in Section 9(1)(b) or 3 of this administrative regulator or of treated water TOC for a system meeting the criterion in Section 9(1)(b)2 of this administrative regulation;
5. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water specific ultraviolet absorbance, or SUVA, for a system meeting the criterion in Section 9(1)(b)5 of this administrative regulation or of treated water SUVA for a system meeting the criterion in Section 9(1)(b)8 of this administrative regulation;
6. The running annual average of source water alkalinity for a system meeting the criterion in Section 9(1)(b)3 of this administrative regulation and of treated water alkalinity for a system meeting the criterion in Section 9(1)(b)4 of this administrative regulation;
7. The running annual average for both TTHM and HAA5 for a system meeting the criterion in Section 9(1)(b)3 or 4 of this administrative regulation;
8. The running annual average of the amount of magnesium hardness removal, as CaCO3 in mg/L, for a system meeting the criterion in Section 9(1)(c)2 of this administrative regulation; and
9. If the system is in compliance or not with the particular alternative compliance criterion in Section 9(1)(b) or (c) of this administrative regulation.

(a) A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal level specified in subsection (2) of this section unless the system meets at least one (1) of the alternative compliance criteria listed in paragraph (b) or (c) of this subsection.
(b) Alternative compliance criteria for enhanced coagulation and enhanced softening system. A system that uses as its source surface water or groundwater under the direct influence of surface water using conventional filtration treatment may use the alternative compliance criteria in subparagraphs 1 to 6 of this paragraph to comply with this section, instead of complying with subsection (2) of this section. A system shall still comply with the monitoring requirements in Section 8(4) of this administrative regulation.

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1. The system's source water TOC level, measured according to 40 C.F.R. 141.131(d)(3), January 16, 2001, is less than two and zero-twenths (2.0) mg/L, calculated quarterly as a running annual average;

2. The system's treated water TOC level, measured according to 40 C.F.R. 141.131(d)(3), January 16, 2001, is less than two and zero-twenths (2.0) mg/L, calculated quarterly as a running annual average;

3. a. The system's source water TOC level, measured according to 40 C.F.R. 141.131(d)(3), January 16, 2001, is less than four and zero-twenths (4.0) mg/L, calculated quarterly as a running annual average;

b. The system's source water alkalinity, measured according to 40 C.F.R. 141.131(d)(1), January 16, 2001, is greater than sixty (60) mg/L as CaCO₃, calculated quarterly as a running annual average; and

c. The TTHM and HAAS running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or

(ii) Before the effective date for compliance in Section 2 of this administrative regulation, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in Section 2 of this administrative regulation to the use of technologies that will limit the levels of TTHMs and HAAS to no more than 0.040 mg/L and 0.030 mg/L, respectively. The system shall submit evidence of a clear and irrevocable financial commitment in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, that the system shall not be inoperable for periods that are not later than the effective date for compliance in Section 2 of this administrative regulation. These technologies shall be installed and operating not later than June 30, 2001. Failure to install and operate these technologies by the date in the approved schedule shall constitute a violation of this administrative regulation.

4. The TTHM and HAAS running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system;

5. The system's source water SUVA, before any treatment and measured monthly according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero-twenths (2.0) L/mg-m, calculated quarterly as a running annual average;

6. The system's finished water SUVA, measured monthly according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero-twenths (2.0) L/mg-m, calculated quarterly as a running annual average.

(c) Additional alternative compliance criteria for a softening system. A system practicing enhanced softening that is not able to achieve the TOC removal required by subsection (b)(2)(ii) of this section may use the alternative compliance criteria in subparagraphs 1 and 2 of this paragraph instead of complying with subsection (2) of this section. The system shall still comply with monitoring requirements in Section 6(4) of this administrative regulation.

1. Softening that results in lowering the treated water alkalinity to less than sixty (60) mg/L as CaCO₃, measured monthly according to 40 C.F.R. 141.131(d)(1), January 16, 2001, and calculated quarterly as a running annual average, and

2. Softening that results in removing at least ten (10) mg/L of magnesium hardness as CaCO₃, measured monthly and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(a) A system shall achieve the percent reduction of TOC specified in paragraph (b) of this subsection between the source water and the combined filter effluent, unless the cabinet approves a system's request for Step 2 requirements under paragraph (c) of this subsection.

(b) Required Step 1 TOC reductions, included in the following table, are based upon specified source water parameters measured in accordance with 40 C.F.R. 141.131(d), January 16, 2001. A system practicing enhanced softening shall meet the Step 1 TOC reductions in the column of the table for source water alkalinity greater than 120 mg/L, as specified for the source water TOC:

<table>
<thead>
<tr>
<th>Source water TOC, mg/L</th>
<th>Source water alkalinity, mg/L as CaCO₃</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 60</td>
<td>0 - 60</td>
</tr>
<tr>
<td>61 - 120</td>
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</tr>
<tr>
<td>&gt; 120</td>
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<tbody>
<tr>
<td>2.0 ≤ TOC ≤ 4.0</td>
<td>35.0% 25.0% 15.0%</td>
</tr>
<tr>
<td>TOC &gt; 8.0</td>
<td>45.0% 35.0% 25.0%</td>
</tr>
</tbody>
</table>

A system meeting a condition in subsection (1)(b) of this section need not operate with enhanced coagulation.

A system meeting a condition in subsection (3) of this section need not operate with enhanced softening.

A system practicing softening shall meet the TOC removal requirements in this column.

(c) A system that uses as its source surface water or groundwater under the direct influence of Surface Water Using Conventional Treatment

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</tbody>
</table>

A system meeting a condition in subsection (1)(b) of this section need not operate with enhanced coagulation.

A system meeting a condition in subsection (3) of this section need not operate with enhanced softening.

A system practicing softening shall meet the TOC removal requirements in this column.
removal approved under paragraph (c) of this subsection.

5. If the TOC removal is consistently less than three-tenths (0.3) mg/L of TOC per ten (10) mg/L of incremental alum dose, at all doses of alum, or equivalent addition of iron coagulant, the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the cabinet for a waiver of enhanced coagulation requirements.

Compliance calculations.

(a) A system that uses its source surface water or groundwater under the direct influence of surface water other than that identified in subsection (1)(b) or (c) of this section, shall comply with requirements in subsection (2)(b) or (c) of this section. A system shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

1. Determine actual monthly TOC percent removal, which shall be calculated as:

   \[
   (1 - (\text{treated water TOC/source water TOC})) \times 100
   \]

2. Determine the required monthly TOC percent removal from either the table in subsection (2)(b) of this section or from subsection (2)(c) of this section;

3. Divide the value in subparagraph 1 of this paragraph by the value in subparagraph 2 of this paragraph;

4. Add together the results of subparagraph 3 of this paragraph for the past twelve (12) months and divide by twelve (12); and

5. If the value calculated in subparagraph 4 of this paragraph is less than the required annual average, the system is not in compliance with the TOC percent removal requirements.

(b) A system may use the provisions in subparagraph 1 to 5 of this paragraph instead of the calculations in paragraph (a)1 through 5 of this subsection to determine compliance with TOC percent removal requirements:

1. In a month that the system’s treated or source water TOC levels, measured according to 40 C.F.R. 141.131(d)(3) January 16, 2001, is less than or equal to two and zero-tenths (2.0) mg/L, the system may assign a monthly value of one and zero-tenths (1.0) mg/L of TOC as compliance under the provisions of paragraph (a) of this subsection;

2. In a month that a system practicing softening removes at least ten (10) mg/L of magnesium hardness, as CaCO₃, the system may assign a monthly value of one and zero-tenths (1.0) mg/L of TOC as compliance under the provisions of paragraph (a) of this subsection;

3. In a month that the system’s source water SUVA, before treatment and measured according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) mg/L of TOC as compliance under the provisions of paragraph (a) of this subsection;

4. In a month that the system’s finished water SUVA, measured according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) mg/L of TOC as compliance under the provisions of paragraph (a) of this subsection;

5. In a month that the system enhanced softened lowering alkalinity below sixty (60) mg/L as CaCO₃, the system may assign a monthly value of one and zero-tenths (1.0) mg/L of TOC as compliance under the provisions of paragraph (a) of this subsection when calculating compliance under the provisions of paragraph (a) of this subsection;

(c) A system that uses as its source surface water or groundwater under the direct influence of surface water and that uses conventional treatment may also comply with the requirements of this paragraph by meeting the criteria in subsection (1)(b) or (c) of this section.

(d) Treatment technique requirements for disinfection by-products (DBP) precursors. For a system that uses surface water or groundwater as its source and that uses conventional treatment, enhanced coagulation or enhanced softening shall be a treatment technique to control the level of disinfection by-product precursors in a drinking water treatment or drinking water distribution system.

[Section 10. Federal Regulation Adopted Without Change. (1) 40 C.F.R. 141.131, July 2000. (2) The subject matter of this administrative regulation relating to the analytical methods and other analytical requirements is governed by that federal regulation.]

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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. 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 request a transcript, you may be required to pay for it. 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 January 2, 2006. Send a notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Justin Deamnger, Regulations Coordinator
Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes criteria under which water systems that add a chemical disinfectant to their water must meet maximum contaminant levels and maximum residual disinfectant levels, and establishes treatment techniques for specified contaminants.

(b) The necessity of this administrative regulation: This regulation is necessary so that Kentucky can maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the requirements of federal regulations, including rules for disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors in 40 C.F.R. Part 141, Subpart L (40 C.F.R. 141.130 - 141.135).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is consistent with the federal regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the Cabinet and supports Kentucky’s comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this regulation makes minor corrections to the table in Section 6, as required by the U.S. Environmental Protection Agency.

(b) The necessity of the amendment to this administrative regulation: This amendment to the regulation is necessary so that Kentucky can maintain primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors specified in 40 C.F.R. Part 141, Subpart L (40 C.F.R. 141.130 - 141.135).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the regulation is consistent with
the federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the regulation is necessary so that Kentucky can maintain privacy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the regulation applies to public water systems, community and noncommunity, that add a chemical disinfectant to their water. Larger systems (serving 10,000 people or more) have been subject to this rule since January 1, 2001; smaller systems became subject to the rule January 1, 2004. Kentucky's regulation went into effect April 2001.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public Water Systems may have to add or modify their disinfection process or system in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a cost associated with the modification or addition of drinking water filtration systems. These costs are on a case by case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public Water Systems meeting the requirements of this amendment would be ensuring the quality of the water provided to the public and avoid any resultant non-compliance actions.

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

(a) Initially: None anticipated.

(b) On a continuing basis: None anticipated.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None required.

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

(9) TIERING: Is tiering applied? Yes. Due to the federal definition of various sized public water systems and how the regulation applies to each, it is necessary to address various size systems differently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment to the regulation composes with federal requirements provided in 40 C.F.R. 141.20, 141.30, 141.64, 141.65, 141.130 to 141.35, 141.140 to 141.144, and 42 U.S.C. 300f, 300g, 300h, 300j.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. This amendment to the regulation is consistent with the federal regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by the administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.20, 141.64, 141.65, 141.130 to 141.135, 142.60, & 42 U.S.C. Chapter 6A Subchapter XII.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not change revenue for local or state governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not change revenue for local or state governments.

(c) How much will it cost to administer this program for the first year? This amendment will not change costs for local or state governments.

(d) How much will it cost to administer this program for subsequent years? This amendment will not change costs for local or state governments.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not Applicable.

Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:550, Radionuclides.

RELATES TO: KRS 224.10-110(3), 224.10-110 [Chapter 224], 40 C.F.R. 141.25, [40 C.F.R. 141.65]


NECESSITY, FUNCTION, AND CONFORMITY: KRS [Chapter] 224.10-110 directs the cabinet to enforce the rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. [The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations that are less stringent than the national primary drinking water regulations, and are meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility.] This administrative regulation sets forth the requirements for sampling and testing procedures for radionuclides and sets maximum contaminant levels for safe drinking water.

Section 1. Applicability. This administrative regulation shall apply to all community water systems.

1. A community water system shall comply with the MCLs for combined radium-226 and radium-228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium beginning the effective date of this administrative regulation.

2. Compliance shall be determined in accordance with the requirements of Sections 3 and 4 of this administrative regulation.

3. Compliance with the reporting requirements of 401 KAR...
8,070 and 8,075 shall be effective on the effective date of this ad-
ministrative regulation.

Section 2. MCL, Best Available Technology, and Small System
Compliance Technology. (1) MCLs. The MCLs for radionuclides
shall be: (All producers of water for community water systems shall
sample for radionuclides. Community water systems that purchase
call of their water from others are not required to sample for rad-
ionuclides. The cabinet may provide technical assistance in sam-
ping and sample analysis for radionuclides.

Section 3. Sampling—Frequency—Sampling for radionuclides
shall be on a schedule determined by the cabinet, but in no event
shall it be less than once every four (4) years for community wa-
ter systems. Public water systems shall submit to the cabinet data
obtained by analyses performed on the samples taken within ten (10)
days of the end of the compliance period for which the sample was
taken.

Section 4. Maximum-Radionuclide Limits. Maximum contami-
nant-levels for radionuclides shall be those levels specified in sub-
sections (1) and (2) of this section.

1. Uranium—thirty (30) micrograms per liter, or µg/L.
2. Strontium-90—Bone marrow, 8 U/L.

(d) Uranium; thirty (30) micrograms per liter, or µg/L.
(2) Best available technology. The best available technology,
or BAT, for achieving compliance with the MCLs in Section 2(1) of
this administrative regulation shall be:

(a) Combined radium-226 and radium-228 by ion exchange,
reverse osmosis, lime softening, or coagulation/filtration;
(b) Uranium by ion exchange, reverse osmosis, lime softening,
or coagulation/filtration;
(c) Gross alpha particle activity, excluding radon and uranium
by reverse osmosis; and

(3) Small system compliance technology. (a) Table B shall
be used for determining small system compli-
ance technologies for radionuclides. Table B also provides
the limitations of use for the given technology.

| Table B |
|-----------------|-----------------|-----------------|
| Unit Technology | Limitation (see foot-
| Technology       | notes)           | Required        |
| Raw Water        | Quality Range   | And Considera-
| 1. Ion exchange, | Intermediate | All groundwa-
| TE                |                  | ters             |
| 2. Point of use, | Basic           | All groundwa-
| POE, TE          |                  | ters             |
| 3. Reverse      | Advanced         | Surface waters | usually require |
| osmosis, RO      |                  | usually require | prefiltration   |
| 4. POE, RO       | Basic            | All waters      |
| 5. Lime soften-
|ing                | Advanced         | All waters      |
| 6. Green sand    | Basic            | Basic           |
| filtration       |                  | Basic           |
| 7. Coagulation   | Intermediate     | Groundwaters    |
| with barium      | to Advanced      | with suitable   |
| sulfate          |                  | water quality   |
| 8. Electrolysis | Basic to In-
|     reversal     | tensive        | All groundwates |
| 9. Prefiltered   | Intermediate     | All groundwates |
| hydropic Mangan-
|ese oxide        |                  |                 |
| filtration       |                  |                 |
| 10. Activated    | Advanced         | All groundwae-
| alumina          |                  | ters: competen-
|                  |                  | tation concen-
|                  |                  | trations may af-
|                  |                  | fect regeneration |
|                  |                  | frequency       |
| 11. Enhanced     | Advanced         | Can treat a wide |
| coagulation,     |                  | range of water |
| filtration       |                  | qualities       |

Footnotes

See 40 C.F.R. 141.70 (January 14, 2002).
* POE, or point of use, technology; a treatment device installed at a
single tap to be used for the purpose of reducing contaminants in
drinking water at that one (1) tap, POE devices are typically in-
stalled at the kitchen tap.

Limitations Footnotes: Technologies for radionuclides

a. The regeneration solution contains high concentrations of the
contaminant ions. Disposal options shall be carefully considered.
b. If POE device is used for compliance, the water system shall
provide a program for long-term operation, maintenance, and
monitoring to ensure proper performance.
c. React water disposal options shall be carefully considered be-
fore choosing this technology. See other RO limitations described
d. The combination of variable source water quality and the com-
plexity of the water chemistry involved may make this technology
too complex for small surface water systems.
e. Removal efficiencies may vary depending on water quality.
f. This technology may be very limited in application to a small
g. Since the process requires static mixers, detention bas-
h. This technology is only applicable to a small system that al-

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Section 3. Detection Limits and Analytical Methods. (1) Detection limit. To monitor the radioactivity concentration in drinking water, the required sensitivity of the radioanalysis shall be determined by the detection limit. The detection limit shall be that concentration which is able to be counted with a probability of plus or minus 100 percent at the ninety-five (95) percent confidence level, or 1.96 standard deviations of the net counting rate of the sample.

(a) To determine compliance with the MCLs in Section 2(1)(a) and (c) of this administrative regulation, the detection limits shall not exceed the following concentrations:

1. Gross alpha particle activity: three (3) pCi/L;
2. Ra-226 and Ra-228: one (1) pCi/L;
3. Uranium: one (1) pCi/L.

(b) To determine compliance with the MCLs for manmade beta and photon emitters in Section 2(1)(b) of this administrative regulation, the detection limit shall not exceed the following concentrations:

1. Tritium: 1.000 pCi/L;
2. Strontium-89/90: one (1) pCi/L;
3. Iodine-131: one (1) pCi/L;
4. Cesium-134: one (1) pCi/L;
5. Other radionuclides: one-tenth (0.1) of the applicable limit.

(c) To determine compliance with the MCLs in Section 2 of this administrative regulation, the data shall be averaged, and the average shall be rounded to the same number of significant figures as the MCL for that contaminant.

(d) The cabinet may determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies.

(2) Analytical methods. The analytical methods specified in 40 C.F.R. 141 and 142(a) and (b), July 1, 2005, shall be used to determine compliance with Section 2 of this administrative regulation.

Section 4. Monitoring Frequency and Compliance. (1) Gross alpha particle activity, radium-226, radium-228, and uranium. (a) A community water system shall conduct initial monitoring to determine compliance with Section 2 of this administrative regulation numbers shall correspond with the purposes of monitoring for these contaminants, the detection limits shall be as specified in Section 3 of this administrative regulation.

1. Existing system or source. An existing community water system that uses groundwater, surface water, or both shall sample at every entry point to the distribution system that is representative of all sources being used under normal operating conditions, called the "sampling point." The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source, or the cabinet designates a distribution system location, in accordance with subparagraph 2 of this paragraph.

2. New system or source. A new community water system or community water system that uses a new source of water shall begin to conduct initial monitoring for the new source within the first quarter after intaking use of the source. A system shall conduct more frequent monitoring if directed by the cabinet, based on possible contamination or if changes in the distribution system or treatment processes occur that may increase the concentration of radioactivity in finished water.

(b) Initial monitoring. A system shall conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

1. A system without acceptable historical data as specified in subparagraph 2 of this paragraph shall collect four (4) consecutive quarterly samples at each sampling point before December 31, 2007.

2. Grandfathered data. The cabinet may allow historical monitoring data collected at a sampling point to satisfy the initial monitoring for that sampling point in the following situations:

a. A community water system that has only one (1) entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003;

b. A community water system that has multiple entry points and that has appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003; and

c. A community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003, if the cabinet determines that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points. The cabinet shall make a written finding indicating how the data conform to these requirements.

3. The cabinet may waive the final two (2) quarters of initial monitoring, if requested, for a sampling point if the results of the samples from the previous two (2) quarters are below the detection limit and 4. If the average of the initial monitoring results for a sampling point is above the MCL, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as a part of a formal agreement with the cabinet.

(c) Reduced monitoring. After the initial monitoring in paragraph 3 of this subsection has been completed or fulfilled, a water system may request the cabinet to reduce the frequency of monitoring from once every three (3) years to once every five (5) years, under the following conditions:

1. If the average of the initial monitoring results for each contaminant is below the detection limit provided in Section 3 of this administrative regulation, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years.

2. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half (1/2) the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every six (6) years.

3. If the average of the initial monitoring results for each contaminant is above
one-half (1/2) the MCL but at or below the MCL, the system shall collect and analyze at least one (1) sample at that sampling point every three (3) years.

b. For combined radium-226 and radium-228, the analytical results shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above one-half (1/2) the MCL but at or below the MCL, the system shall collect and analyze at least one (1) sample at that sampling point every three (3) years.

4. A system shall use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods. For example, if a system's sampling point is on a reduced monitoring period, the sample result is greater than one-half (1/2) the MCL, then the next monitoring period for that sampling point shall be three (3) years.

5. If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal agreed order with the cabinet.

(d) Compositing. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four (4) consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. The cabinet shall treat analytical results from the composited sample as if they are a single analytical result that is in compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than one-half (1/2) the MCL, the cabinet shall direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(e) 1. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the measured gross alpha particle activity does not exceed five (5) pCi/L.

2. A gross alpha particle activity measurement may be substituted for the required uranium measurement if the measured gross alpha particle activity does not exceed fifteen (15) pCi/L.

3. The gross alpha measurement shall have a confidence interval of ninety-five (95) percent, or 1.68 standard deviations of the pot count ratio of the sample, for radium-226 and uranium.

4. If a system uses a gross alpha particle activity measurement in place of a radium-226 or uranium measurement, the gross alpha particle activity analytical result shall be used to determine the future monitoring frequency for radium-226 and uranium.

5. If the gross alpha particle activity result is less than the detection limit, one-half (1/2) the detection limit shall be used to determine the monitoring frequency for future monitoring.

(2) Beta particle and photon radioactivity. To determine compliance with this MCLs in Section 2 of this administrative regulation, a system shall monitor for beta particle and photon radioactivity, a system shall monitor at the frequency described below:

A community water system, surface or groundwater, designated by the cabinet as vulnerable shall sample for beta particle and photon radioactivity. The system shall collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system, called the sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet shall continue to sample until the cabinet reviews and either reclassifies or removes the designation.

1. If the gross beta particle activity minus the naturally-occurring potassium-40 beta particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifty (50) pCi/L, the system may reduce the frequency of monitoring at that sampling point to once every three (3) years. A system shall collect all samples required in paragraph (b)(1) of this section during the reduced monitoring period.

2. A system in the vicinity of a nuclear facility, the system may use environmental surveillance data collected by the nuclear facility instead of monitoring at the system's entry point, if the cabinet determines that the data are applicable to the particular water system.

b. If there is a release from a nuclear facility, a system that is using surveillance data shall begin monitoring at the system's entry point in accordance with paragraph (b)(1) of this section.

A community water system, either surface or groundwater, designated by the cabinet as vulnerable shall sample for beta particle and photon radioactivity. The system shall collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, called a sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet shall continue to sample until the cabinet reviews and either reclassifies or removes the designation.

1. Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples.

2. For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. More frequent monitoring shall be conducted when iodine-131 is identified in the finished water. If iodine-131 is identified in the finished water more frequent monitoring shall be required.

3. Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples.

4. If the gross beta particle activity minus the naturally-occurring potassium-40 beta particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifteen (15) pCi/L, the cabinet may reduce the frequency of monitoring at that sampling point to every three (3) years. The system shall collect the same type of samples required in paragraph (b)(2) of this section during the reduced monitoring period.

5. For a system in the vicinity of a nuclear facility, the system may use environmental surveillance data collected by the nuclear facility instead of monitoring at the system's entry point, if the cabinet determines that the data are applicable to the particular water system. If there is a release from the nuclear facility, a system that is using surveillance data shall begin monitoring at the system's entry points in accordance with paragraph (b)(2) of this section.

A system designated by the cabinet to monitor for beta particle and photon radioactivity shall not apply to the cabinet for a waiver from the monitoring frequencies specified in paragraph (b)(1) or (b)(2) of this section.

A system may analyze for naturally-occurring potassium-40 beta particle activity using the same or equivalent sample used for the gross beta particle activity analysis. A system may subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity shall be calculated by multiplying elemental potassium concentrations in mg/L by a factor of 0.02.

A system may analyze for naturally-occurring potassium-40 beta particle activity at a sampling point that exceeds the MCL in 40 C.F.R. 141.66(d), July 1, 2005, beginning the month after the exceedance occurs. A system shall continue monitoring monthly until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met. A system that establishes that the MCL is being met shall reduce to quarterly monitoring until it meets the requirements set forth in paragraphs (b)(1)(i) or (b)(2)(iv) of this section.

(3) General monitoring and compliance requirements. (a) The cabinet may require more frequent monitoring than specified in paragraphs (a) and (b) of this section or may require confirmation...
samples. The results of the initial and confirmation samples shall be averaged in determining compliance.

(b) Each public water system shall monitor at the required frequency in accordance with this administrative regulation.

(c) Compliance: Compliance with this section shall be determined based on the analytical result obtained at each sampling point. If one (1) sampling point is in violation of a MCL, the system shall be in violation of the MCL.

1. For a system that monitors more than once per year, compliance with the MCL shall be determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then that system shall be out of compliance. That system shall be in violation of the MCL.

2. For a system monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sampling point, the system shall be out of compliance with the MCL immediately.

3. A system shall include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

4. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance shall be based on the running average of the actual number of samples collected, not the required number of samples.

5. If a sample result is less than the detection limit, zero shall be used to calculate the annual average, unless a gross alpha particle activity is being used instead of radium-226 or uranium. If the gross alpha particle activity result is less than the detection limit, one-half (1/2) the detection limit shall be used to calculate the annual average.

(d) The cabinet may delete results of apparent sampling or analytic errors.

(e) If a MCL for radioactivity set forth in Section 2 of this administrative regulation is exceeded, the operator of a community water system shall give notice to the cabinet pursuant to 401 KAR 8:920 and to the public as required by 8:70.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. or through www.water.ky.gov/cdw.

[Section 6. Sampling and Measurement Technique - Sampling and measurement shall be in accordance with the procedures set forth in Federal Register 28402 (July 9, 1976), Sections 141.2.5 and 141.26, which may be obtained through the cabinet.]

Section 6. Radionuclides Limit Exceeded. If the average annual maximum contaminant level for radionuclides is exceeded, the supplier of a community water system shall give notice to the cabinet and notify the public pursuant to 401 KAR 8 070. Monitoring at quarterly intervals for gross alpha particle activity, radium-226, and radium-226, and at monthly intervals for all other radionuclides, depending on which limit is exceeded, shall continue until the annual-average concentration no longer exceeds the maximum contaminant level, or until a monitoring schedule, as a condition to a variance, exemption, or enforcement action, becomes effective.

Section 7. The following document is incorporated by reference and is available for viewing and copying between the hours of 8 a.m. and 4:30 p.m. at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601: "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air or Water for Occupational Exposure" MBS Handbook 69, as amended in August 1983.

Section 8. Severability. If any provision of this administrative regulation is set aside by a court of competent jurisdiction, the remainder of this administrative regulation remains in effect.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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. 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 request a transcript, you may be required to pay for it. 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 January 2, 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: Justin Deaner, Regulations Coordinator
Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation prescribes the maximum contaminant levels and detection levels for radionuclides, which are regulated by the U.S. Environmental Protection Agency in 40 C.F.R. 141.66.
(b) The necessity of this administrative regulation: This regulation is necessary so that Kentucky can continue to maintain primary and secondary standards for the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for radionuclides in 40 C.F.R. 141.66. The federal regulation was amended on December 7, 2000, and became effective December 8, 2003.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation will be consistent with the federal regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation improves the regulatory procedures used by the cabinet and supports Kentucky's comprehensive program for public and semipublic water systems in providing drinking water to citizens of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to the regulation prescribes the maximum contaminant levels and detection levels for radionuclides, which are regulated by the U.S. Environmental Protection Agency in 40 C.F.R. 141.66. It applies to community water systems only and sets new maximum contaminant levels and minimum detection levels for the following radionuclides: uranium, combined radium-226 and radium-228, and gross alpha particle radioactivity.
(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is necessary so that Kentucky can continue to maintain primary and secondary standards for the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for radionuclides.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation will be consistent with the federal regulations, which were amended on December 7, 2000, and became effective December 8, 2003.
(d) How the amendment will assist in the effective administration of the statutes: This amendment to the regulation conforms with the Governor's Restoring Hope initiatives, particularly by improving regulatory procedures and updating the regulation to be consistent with the federal regulations, where applicable.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Every community water system is subject to the requirements for radionuclides; some of these systems may be small businesses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public water systems with certified labs, or certified commercial labs may have to modify the methodology used to meet the updated minimum contaminant level (MCL) stated in the amendment regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There may be an initial cost to modify methodologies, but the cost should be negligible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Public Water Systems, utilizing certified labs, meeting the requirements of this amendment would be ensuring the quality of the water provided to the public and avoid any resulting non-compliance actions.

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

(a) Initially: None anticipated.

(b) On a continuing basis: None anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No extra funding is needed from this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees established, either directly or indirectly.

(9) TIERING: Is tiering applied? Yes. Due to the federal definitions of various sized public water systems and how the regulation applies to each, it is necessary to address various size systems differently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment to the regulation complies with federal requirements provided in 40 C.F.R. 141.11, 141.23, 141.41, 141.62, and 42 U.S.C. 300F, 300G, 300H, 300I.

2. State compliance standards: Not applicable.

3. Minimum or uniform standards contained in the federal mandate: This amended regulation will be consistent with the federal regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems must meet the requirements of this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224 10-100(30), 224.10-110, 40 C.F.R. 141.25, 141.26, 141.65, and 42 U.S.C. Chapter 6A Subchapter XII.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not increase or decrease current revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not increase or decrease current revenue.

(c) How much will it cost to administer this program for the first year? This amendment will not increase or decrease cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase or decrease cost.

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

Revenues (+/-): None anticipated.

Expenditures (+/-): None anticipated.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 8:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures, November 15, 2006 [April 10, 2006]" are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 8/9/05)
1.4 The Monitoring and Operation of Private Prisons (Amended 8/9/05)
2.1 Inmate Canteen (Amended 2/15/06)
2.2 Warden's Fund (Amended 10/14/05)
3.1 Code of Ethics (Amended 8/9/05)
3.3 Holding of Second Jobs by Corrections' Employees (Amended 8/9/05)
3.5 Sexual Harassment and Anti-Harassment (Amended 8/9/05)
3.10 Appearance and Dress for Nonuniformed Staff (Amended 11/9/04)
3.11 Drug Free Workplace Employee Drug Testing (Amended 8/9/05)
3.17 Uniformed Employee Dress Code (Amended 4/10/06)
3.20 Communication and Recording Devices (Amended 6/3/05)
5.1 Research and Survey Projects (Amended 8/9/05)
6.1 Open Records Law (Amended 8/9/05)
8.2 Fire Safety (Amended 2/15/06)
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 11/15/06 [14/14/06])
9.18 Information for Forensic Psychiatric Evaluations (Amended 12/13/05)
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 11/15/06 [14/16/04])
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 8/8/05)
11.4 Alternative Dietary Patterns (Amended 6/2/05)
13.1 Pharmacy Policy and Formulary (Amended 11/15/06 [10/14/05])
13.2 Health Maintenance Services (Amended 11/15/06 [10/14/05])
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 8/9/05)
13.7 Involuntary Psychotropic 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 11/15/06 [10/14/06])
14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06 [10/14/06])
15.1 Hair, Grooming and ID Card Standards (Amended 12/13/05)
15.2 Rule Violations and Penalties (Amended 11/15/06 [2/14/05])
15.3 Meritorious Good Time (Amended 12/13/05)
15.5 Restoration of Forfeited Good Time (Amended 10/14/05)
15.6 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restriction (Amended 11/15/06 [12/14/05])
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 10/14/05)
16.2 Inmate Correspondence (Amended 11/15/06 [10/14/06])
16.3 Inmate Access to Telephones (Amended 6/2/05)
16.4 Inmate Packages (Amended 11/15/06 [8/4/06])
17.1 Inmate Personal Property (Amended 11/15/06 [2/14/05])
17.2 Assessment Center Operations (Amended 11/15/06 [4/16/05])
17.3 Controlled Intake of Inmates (Amended 1/12/05)
17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
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)
18.6 Transfers (Amended 10/14/05)
18.9 Out-of-state Transfers (Amended 2/15/06)
18.11 Placement for Mental Health Treatment in CPTU, KCW, PUC, or KCPC (Amended 11/15/06 [2/05/05])
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Effective 8/1/01)
18.15 Protective Custody (Amended 11/15/06 [4/14/05])
18.18 Information to the Parole Board (Effective 11/15/06 [12/18/05])
18.17 Interstate Agreement on Detainers (Effective 2/17/95)
18.18 International Transfer of Inmates (Effective 8/15/01)
19.1 Governmental Services Program (Amended 11/15/06 [2/14/06])
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 10/14/05)
20.1 Educational Programs and Educational Good Time (Amended 4/10/06)
22.1 Privilege Trips (Amended 10/14/05)
23.1 Religious Programs (Amended 11/15/06 [10/14/06])
23.5 Graduation (Effective 7/28/05)
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Parole Release Program (Effective 11/15/06 [7/28/92])
25.4 Institutional Furloughs (Amended 10/14/05)
25.6 Community Center Program (Effective 11/15/06 [12/14/01])
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 (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Department of Correction, Office of Legal Services, 275 E. Main Street, P.O. Box 2400, 125 Holmes-Street, 3rd Floor, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6434, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: November 3, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 9 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-6229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Trena C. Rogers
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections including the rights and responsibilities of employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.
(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation governs the operations of the Kentucky Department of Corrections.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to corrections employees concerning the duties and responsibilities of their jobs and to inmates concerning their rights 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 brings the Kentucky Department of Corrections into compliance with ACA Standards and updates.
current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state institutions.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,825 employees and 19,501 inmates, and all visitors to state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question 3 will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3: Inmates incarcerated in state-operated institutions will be required to pay an additional $1 copay for certain visits to the medical department. Additionally, the inmates will be required to pay a $3 copay for eyeglasses, a $10 copay for prostheses, and a $2 copay for nonformulary prescriptions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: The operational changes will assist in the effective and orderly management of the penal institutions.

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

(a) Initially: None

(b) On a continuing basis: None

6. What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted 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: Inmate medical co-payments were increased in CPP 13.2 and will be paid from the inmate's funds unless he is indigent.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes

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 STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation may impact local or state police agencies by the reporting of suspected criminal activity at Department of Corrections facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Corrections will receive a small amount of money in the form of a fee increase from $2.00 to $3.00 and the addition of a few other smaller fees in the area of inmate medical care.

5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Corrections will receive a small amount of money in the form of a fee increase from $2.00 to $3.00 and the addition of a few other smaller fees in the area of inmate medical care.

6. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Similar amounts are expected for future years.

7. How much will it cost to administer this program for the first year? No new programs are created. This regulation impacts how the Department of Corrections operates, but does not increase costs from what was previously budgeted to the Department of Corrections.

8. How much will it cost to administer this program for subsequent years? This regulation impacts how the Department of Corrections operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-): See 4(a) above
Expenditures (+/-): See 4(c) above.
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

(Amendment)


RELATES TO KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These manuals are referenced in policies and procedures for the Department of Corrections. These policies and procedures are incorporated by reference in order to comply with the accreditation standard by 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 Manuals [Manual], November 15, 2006 [April 14, 2002]," is incorporated by reference. Department of Corrections Manuals includes:

(a) Classification Manual (Amended 4/15/02); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services [the General Counsel], Department of Corrections, 275 E. Main Street [2459 Lawreneceburg Road], PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES M. SCHOMIG, Acting Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on
December 21, 2006 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 1, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-5229

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers

1. Provide a brief summary of:
   (a) What this administrative regulation does: This regulation incorporates by reference the manuals referenced in the policies and procedures governing the Kentucky Department of Corrections.
   (b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs certain aspects of the operations of the Kentucky Department of Corrections.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to corrections employees concerning the duties and responsibilities of their jobs and to inmates concerning their rights 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 adds an additional manual to the regulation.
   (b) The necessity of the amendment to this administrative regulation: The manual is referenced in CPP 23.1 In 501 KAR 6.020.
   (c) How the amendment conforms to the content of the authorizing statutes: The statute permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,625 employees and 19,501 inmates.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) The actions each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The manual gives guidance to staff and inmates concerning religious practices.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown.
   (c) As a result of compliance, what benefits will accrue to the

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The amendment to this regulation will impact correctional institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:

5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by the amendment.

6. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by the amendment.

7. How much will it cost to administer this program for the first year? An amount is not currently known. Inmates will pay most of the costs of the religious program expenses.

8. How much will it cost to administer this program for subsequent years? Inmates will pay most of the costs of the religious program expenses.

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

Revenues (+/-):

Expenditures (+/-): The expenses will depend on the number of inmates requesting special items, etc. for religious programs. Inmates are expected to pay most if not all of the costs of the additional religious program expenditures.

Other Explanation:
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)

502 KAR 11:010. Application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110
STATUTORY AUTHORITY: KRS 16 080, 17.080, 237.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4) requires the Department of State Police to establish the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures.

Section 1. Definition. "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

Section 2. (1) Application forms shall not be stored in an area accessible to the public.
(2) Except as permitted by Section 10 of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 3. An application form shall be identified by a unique number that shall be:
(1) Expressed on the application form as a bar code that contains the application number;
(2) Used as the identifying number for the applicant; and
(3) Machine and human readable.

Section 4. A sheriff shall issue an application form to an applicant and accept an application fee if:
(1) An applicant meets the requirements established by KRS 237.110(4)(b), (c), and (d);
(2) Unless exempted by KRS 237.110(6) and (7), an applicant has submitted the material required by KRS 237.110(7);
(3) Verification that an applicant is a resident is made by:
(a) Submission of a valid Kentucky operator's license or personal identification card issued by a court clerk pursuant to KRS 168.412;
(b) Personal knowledge of the sheriff; or
(c) Confirmation by another governmental agency;
(4) Verification of an applicant's Social Security number is made by the submission of:
(a) The applicant's Social Security card; or
(b) A governmental agency document that contains an applicant's name and Social Security number;
(5) Verification of an applicant's age is made by submission of:
(a) An item specified by subsection (4) of this section; or
(b) A birth certificate or other evidence of birth issued by a governmental agency; and
(6) Verification of an applicant's U.S. citizenship is made by submission of a CCDW License Application - Citizenship Affidavit (KSP 131).

Section 5. An applicant who is exempt from the training requirement established by KRS 237.110(4)(i) shall submit documentation establishing that he or she:
(1)(a) Was a peace officer on the date of his or her retirement; and
(b) Is a member of a retirement system specified by KRS 237.110(6)(i);
(2) Is currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404; or
(3) Is a current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(i).

Section 6. Completion of Application Form. An applicant shall:
(1) Complete an application in the presence of the sheriff;
(2) Sign the application in the applicant signature block of the application form in ink;
(3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form and the CCDW License Application - Citizenship Affidavit (KSP 131);
(4) Not fold or tear the form;
(5) Use a black ink pen to complete the form;
(6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
(7) Fill each bubble completely;
(8) Fill in or enter information, as appropriate, within a column block or bubble;
(9) Write within the constrained areas; and
(10) Use upper case (capital) letters.

Section 7. The sheriff shall complete the upper right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:
(1) Completing the OHI Number;
(2) Filling in the date of application;
(3) Indicating if the applicant is an active or retired peace officer or a judicial officer; and
(4) Signing in the portion labeled "Authorizing Official Signature."

Section 8. If an applicant fails to follow the instructions for completion of an application, the sheriff shall:
(1) Destroy the improperly completed application; and
(2) Require the applicant to complete a new application form.

Section 9. The sheriff shall place the following material in a single applicant packet:
(1) The applicant's completed application form;
(2) A photograph of the applicant complying with the provisions of 502 KAR 11:020;
(3) The CCDW License Application - Citizenship Affidavit (KSP 131);
(4)(a) A photocopy of the certificate of completion, or notarized affidavit of completion, of the training or safety course or class required by KRS 237.110(4)(i); or
(b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from the training requirement on the grounds that he or she is:
1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;
2. A current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(i) and successfully completed the basic law enforcement training course required by that agency; or
3. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(i); and
(5)(a) A check or money order for forty ($40.00) dollars payable to the Department of State Police; or
(b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from payment of the application fee on the grounds that he or she is:
1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404; or
2. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(i).

Section 10. (1) The sheriff shall mail single applicant packets:
(a) In a bulk mailer; and
(b) On dates established by the "CCDW - LEOSA Application Mailing Schedule for Sheriffs."
(2) The sheriff shall pay the cost of mailing a bulk mailer.

Section 11. (1) If the department issues an original license pursuant to KRS 237.110(4), it shall:
(a) Transmit the license to the sheriff; and
(b) Send an issuance statement to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and within what date the license will be available from the sheriff.
(2) The sheriff shall issue the license to the applicant upon:
(a) Verification of the identity of the applicant by:
1. Submission of a valid Kentucky operator's license or personal identification card issued by a court clerk pursuant to KRS 168.412; or
2. Personal knowledge of the sheriff; and
   (b) Signature of the Issuance Flashpak by the applicant in the
       presence of the sheriff or his/her designee.

Section 12. Incorporation by Reference. (1) The following ma-
   terial is incorporated by reference:
   (a) Application Form - July 2006;
   (b) "CCDW - LEOA Application Mailing Schedule for Sher-
       rifs." July 2006;
   (c) "CCDW License Application - Citizenship Affidavit (KSP
       121)." July 2006; and
   (d) "Issuance Flashpak." 11/13/06.
   (2) This material may be inspected, copied, or obtained, sub-
       ject to applicable copyright law, at the Department of State Po-
       lice, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through
       Friday, 8 a.m. to 4:30 p.m. (1) Application forms shall not be
       stored in an area accessible to the public.
   (2) Except as permitted by Section 10 of this administrative
       regulation, an application form shall not be removed from the office
       of the sheriff.

Section 2. An Application Form #52476 shall be identified by a
   unique number that shall be:
   (1) Printed on the application form as a bar code that con-
       tains the application number;
   (2) Used as the identifying number for the applicant; and
   (3) Machine readable.

Section 3. No sheriff shall issue an application form to an
   applicant or accept an application fee if:
   (1) An applicant does not meet the requirements established
       by KRS 237.110(2)(a), (b), and (f); or
   (2) The sheriff has verified that an applicant is:
       (a) Disqualified for license pursuant to KRS 237.110(2)(c);
       (b) Has engaged in a domestic violence order or emer-
           gency protective order issued pursuant to KRS Chapter 403; or
       (3) Unless exempted by KRS 237.110(2)(f), an applicant has
           not submitted the materials required by KRS 237.110(6); or
   (4) Verification that an applicant is a resident is not made by
       (a) Submission of a valid Kentucky driver’s license, or nondriving
           identification card issued by a circuit court clerk pursuant to KRS
           488.410; or
       (b) Personal knowledge of the sheriff; or
       (c) Confirmation by another governmental agency; or
   (5) Verification of an applicant’s Social Security number is not
       made by submission of:
       (a) The applicant’s Social Security card; or
       (b) A governmental agency document that contains the appli-
           can’t name and Social Security number; or
   (6) Verification of an applicant’s age is not made by submission
       of:
       (a) The item specified by subsection (4) of this section; or
       (b) A birth certificate or other evidence of birth issued by a
           governmental agency.

Section 4. An applicant who is exempt from the training re-
   quirement established by KRS 237.110(2)(f) shall submit docu-
   mentation establishing that he:
   (1) Was a peace officer on the date of his retirement; or
   (2) Is a member of a retirement system specified by KRS
       237.110(2)(f).

Section 5. An applicant shall:
   (1) Complete an application in the presence of the sheriff, and
   (2) Sign the application in the "applicant signature" block of
       Application Form #52476.

Section 6. Application Form - An applicant shall provide the
   information required by KRS 237.110(4)(a) through (e) on Application
   Form #52476.

Section 7. Completion of Application Form #52476 - An appli-
   cant shall:

   (1) Not fold or tear the form;
   (2) Except as provided by Section 6 of the administrative regu-
       lation, use a No. 2 pencil to complete the form;
   (3) Not mark or otherwise make an entry in the "Sheriff Use
       Only" portion;
   (4) Fill each bubble completely; and
   (5) Fill in or enter information, as appropriate, within a column
       block or bubble.

Section 8. If an applicant fails to follow the instructions for
   completion of an application, the sheriff shall:
   (1) Destroy the improperly completed application;
   (2) Require the applicant to complete a new application form;
   (3) The sheriff shall place the following material in a
       "single applicant packet" provided by the department:
       (1) The applicant’s completed application form;
       (2) A photograph of the applicant complying with the provisions
           of 503 KAR 6:030;
       (3) A photocopy of the certificate of completion, or notarized
           affidavit of completion, of the training or safety course or class
           required by KRS 237.110(2)(f); and
       (4) Material provided by the applicant to the sheriff establishing
           that the applicant is not prohibited from applying or being granted
           a license pursuant to KRS 237.110(2)(e), (f), (g), (h), and (i).

Section 10. (1) The sheriff shall mail "single applicant packets":
   (a) In bulk mailer provided by the department;
   (b) On dates established by the "Mailing Schedule Form.";
   (2) The sheriff shall pay the cost of mailing the bulk mailer pro-
       vided by the department.

Section 11. Incorporation by Reference. (1) The following ma-
   terial is incorporated by reference:
   (a) Application Form - 8/13/06;
   (b) "Mailing Schedule Form." 8/13/06.
   (2) This material may be inspected, copied, or obtained at the
       Department of State Police, 1250 Louisville Road, Frankfort, Ken-
       tucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.

PUBLICATIONS AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on the
21st day of December, 2006 at 9:30 a.m. at Kentucky State Police
Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.
Individuals interested in being heard at this hearing shall notify the
department in writing by the 14th day of December, 2006, five work-
days prior to the hearing, of their intent to attend. If you have a
disability for which the Department of State Police needs to provide
accommodations, please notify us of your requirement by the 14th
day of December, 2006. This request does not have to be in writing.
If no notification of intent to attend the hearing is received by
that date, the hearing may be cancelled. This hearing is open to
the public. Any person who wishes to be heard will be given an
opportunity to comment on the proposed administrative regulation.
A transcript of the public hearing will not be made unless a written
request for a transcript is made. If you do not wish to be heard at
the public hearing, you may submit written comments on the
proposed administrative regulation. Written comments shall be ac-
cepted until the 2nd day of January, 2007. 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: Karen Howard, Justice and Public
Safety Cabinet, Office of Legal Services, 125 Holmes Street, Sec-
ond Floor, Frankfort, Kentucky 40601, phone (502) 564-6215, fax
(502) 564-6666.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
(b) The necessity of this administrative regulation: KRS 237.110 provides for licenses of individuals to carry a concealed deadly weapon in the Commonwealth of Kentucky. KRS 237.110(7) requires the Kentucky State Police to promulgate administrative regulations to implement the application form to obtain a license to carry a concealed deadly weapon.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for the application form for a license to carry a concealed deadly weapon pursuant to KRS 237.110(7) and the administrative procedures for issuance of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the application form for a license to carry a concealed deadly weapon and provides guidance to the Department of State Police, the Sheriffs of the Commonwealth of Kentucky, and applicants in regard to the application process and issuance of a license.

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

(a) How the amendment will change this existing administrative regulation: Updates statute references; establishes method of verification of U.S. citizenship; updates documentation of eligibility for training exemption; updates material sheriffs are required to provide to the Department of State Police; and provides guidelines for issuance of a license.

(b) The necessity of the amendment to this administrative regulation: KRS 237.110(7) provides that the carry concealed deadly weapon license application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation reflects the changes in the application requirements and process as well as the forms utilized by applicants, sheriffs, and the Department of State Police.

(d) How the amendment will assist in the effective administration of the statutes: The statute references in the carry concealed deadly weapons law, KRS 237.110, et seq., have changed and should be updated. Also, KRS 237.110(4) now requires that an applicant be a U.S. citizen, so a method of verification of citizenship is required. In addition, procedures for issuance of a license and updates regarding documentation of eligibility for training exemption and the material sheriffs are required to provide to the Department of State Police are needed.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a $50 application fee, which is apportioned in accordance with KRS 237.110(7). For example, in FY 06, $460,367.50 was generated. In FY 05, $551,783.12 was generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a $50 application fee, which is apportioned in accordance with KRS 237.110(7).

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCDW Program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.
502 KAR 11:020. Applicant photograph requirements for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110(6)(b)
STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110(8)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(8)(b)(6)(b) requires the Department of State Police to establish the requirements for the photograph to be submitted by an applicant for a license to carry a concealed deadly weapon. This administrative regulation establishes the requirements for the photograph.

Section 1. The photograph required by KRS 237.110(8)(b) shall:

1. Be a recent color photograph;
2. Be no less than three and one-half (3 1/2) inches by four (4) inches;
3. Not exceed four (4) inches by five (5) inches;
4. Be an original photograph or a photographic copy developed from the negative of an original photograph;
5. Not be an image produced by a digital camera, computer or a copier or other copy equipment or copy machine;
6. Display the full front of the head and the facial features of the applicant; and
7. Not be a photograph of the applicant wearing:
   a. Sunglasses;
   b. A hat; or
   c. Attire that obscures a feature of the applicant's face.

Section 2. The department shall:

1. Consider an application incomplete if an applicant submits a photograph that it determines does not comply with the requirements of Section 1 of this administrative regulation;
2. Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of 502 KAR 11:040. The photograph required by KRS 237.110(8)(b) shall meet the requirements established by the provisions of this administrative regulation.

Section 3. The photograph shall:

1. Be a color photograph;
2. Be no less than three and one-half (3 1/2) inches by four (4) inches; and
3. Not exceed four (4) inches by five (5) inches.

Section 4. The photograph shall:

1. Be an original photograph, or a photographic copy developed from the negative of an original photograph; and
2. Not be an image produced by a computer or a copier or other copy equipment or copy machine.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of December, 2006 at 9:30 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 14th day of December, 2006, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide an accommodation, please notify us of your requirement by the 14th day of December, 2006. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 2nd day of January, 2007. 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: Karen Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets forth the provisions regarding the requirements for photographs that must be submitted with applications for a license to carry a concealed deadly weapon pursuant to KRS 237.110.
   (b) The necessity of this administrative regulation: KRS 237.110 provides for licensing of individuals to carry a concealed deadly weapon in the Commonwealth of Kentucky. KRS 237.110(8)(b) requires the Kentucky State Police to promulgate administrative regulations to implement the requirements for photographs that must be submitted with applications to obtain a license to carry a concealed deadly weapon.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements for photographs that must be submitted with applications to obtain a license to carry a concealed deadly weapon.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation gives guidance to the Department of State Police and sheriffs of the Commonwealth of Kentucky in regard to the photographs that must be submitted with applications to obtain a license to carry a concealed deadly weapon.
   (2) If 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 adds an additional requirement that the submitted photograph can not be of the applicant wearing a hat. It also reorganizes the requirements and updates citations.
   (b) The necessity of the amendment to this administrative regulation: To clarify the photograph requirements.
   (c) How the amendment conforms to the content of the authorizing statutes: KRS 237.110(8)(b) requires applicants to submit photographs as prescribed by the state police.
   (d) How the amendment will assist in the effective administration of the statutes: It clarifies the photograph requirements that are required by KRS 237.110(8)(b).
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain a license to carry a concealed deadly weapon pursuant to KRS 237.110, all county sheriffs, and the Department of State Police.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified
In question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit a photograph in which the applicant is not wearing a hat; The sheriffs and state police will not have to take any additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in questions (3) and (6) to implement or to provide services as a result of the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be considered for licensure.

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

(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon program and collected by the Department of State Police.

(7) Provide an assessment of whether an 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, see response to (5)(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to (5)(a).

(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110

4. Estimate the effect of this administrative regulation on the expenses and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a $50 application fee, which is apportioned in accordance with KRS 237.110(7). For example, in FY 06, $460,367.50 was generated. In FY 05, $551,783.12 was generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a $50 application fee, which is apportioned in accordance with KRS 237.110(7).

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCWD Program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET

Department of State Police

(Amendment)

502 KAR 11:040. Incomplete application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(7) requires the Department of State Police to establish the application form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the reasons an application form shall be determined incomplete and the required procedures for the department.

Section 1. An application form shall be determined incomplete if:

(1) It does not contain the information and documents required by 502 KAR 11:010;

(2) It does not contain the signatures of the applicant and the authorizing official;

(3) It contains erroneous information; or

(4) An item of the application form cannot be read or understood.

Section 2. If the department determines that an application form is incomplete pursuant to Section 1 of this administrative regulation, the department shall notify the sheriff who transmitted the application form and the applicant on a Missing Information Flash Pak of the:

(1) Reason the application form has been determined to be incomplete; and

(2) The action required to complete the application form.

Section 3. Incorporation by Reference. (1) "Missing Information Flash Pak, November 2006, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. (KRS 237.110(4), requires the Department of State Police to establish the application form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the-(1) reasons an application form shall be deemed incomplete, and (2) action to be taken by the department.

Section 1. An application form shall not be considered complete if:

(1) It does not contain the information and documents required by 503-KAR 6.020;

(2) It contains erroneous information; or

(3) An item of the application form cannot be read or understood.

Section 2. If the department determines that an application form is incomplete pursuant to the provisions of Section 1 of this administrative regulation, the department shall notify the sheriff who transmitted the application form and the applicant on a Missing Information Flash Pak of the:

(1) Reason the application form has been determined to be incomplete; and

(2) The action required to complete the application form.
Section 3 - Incorporation by Reference. (1) The Engineering Notice Form (6/13/98) is incorporated by reference.
(2) This material may be inspected, copied, or obtained at the Department of State Police, 1280 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of December, 2006 at 9:30 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 14th day of December, 2006, five working days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 14th day of December, 2006. This request does not have to be in writing. If no notification of Intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments shall be accepted until the 2nd day of January, 2007. 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: Karen Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reasons that applications for a license to carry a concealed deadly weapon pursuant to KRS 237.110 shall be deemed incomplete and the procedures required of the Department of State Police.
(b) The necessity of this administrative regulation: KRS 237.110(7) requires the Department of State Police to establish the application form to be completed by applicants for a license to carry a concealed deadly weapon in the Commonwealth of Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures to be followed by the Department of State Police in regard to incomplete applications to obtain a license to carry a concealed deadly weapon.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reasons an application shall be deemed incomplete and the action to be taken by the Department of State Police.
(2) If 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 specifies that an application form shall be determined incomplete if it does not contain the signatures of the applicant and authorizing official; it replaces the notification form with an updated form.
(b) The necessity of the amendment to this administrative regulation: To ensure that applications have the required signatures.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 237.110(7) requires the Department of State Police to establish the application form to be completed by applicants for a license to carry a concealed deadly weapon in the Commonwealth of Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: To ensure that applications have the required signatures.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who seek to obtain a license to carry a concealed deadly weapon pursuant to KRS 237.110, all county sheriffs, and the Department of State Police.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It requires the state police to determine that an application is incomplete if it does not have the required signatures.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
Minimal, if any, costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have a better understanding of the application requirements so that they will be more likely to obtain licensure; the state police will have more time available in determining when applications are incomplete and will have applications for each licensee with the required signatures.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(7) Provide an assessment of whether an 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, see response to 5(a).
(8) State whether or not this administrative regulation establishes new fees or directly or indirectly increased any fees: No, see response to 5(a).
(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue is directly dependent on the number of applicants for licensure. By statute, each applicant pays a $60 application fee, which is apportioned in accordance with KRS
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237.110(7). For example, in FY 05, $460,357.50 was generated. In FY 05, $551,783.12 was generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for licenses. By statute, each applicant pays a $50 application fee, which is appropriated in accordance with KRS 237.110(7).

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCDW program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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

Revenues (+/-): 
Expenditures (+/-):
Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Change)

502 KAR 11:050. Updating, replacement, and renewal of license to carry concealed deadly weapon.

RELATES TO: KRS 237.110(4), (5), (6), (7)
STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(11) requires a licensee to notify the department if there is a change in the licensee’s permanent address. KRS 237.110(12) authorizes a licensee to obtain a duplicate license if the original is lost, stolen, or destroyed. KRS 237.110(14) requires an applicant to renew a license to carry a concealed deadly weapon by submitting the department’s renewal form. This administrative regulation establishes the forms and procedures for updating, replacing, and renewing a license to carry a concealed deadly weapon, (4)-(6), and the procedures for requesting a renewal of State Police to establish the procedures for (4) replacement of a lost or stolen license to carry a concealed deadly weapon, and (3) changes in required information relating to licensees to carry a concealed deadly weapon. This administrative regulation establishes the procedures and forms for these subject matters.

Section 1. Change of Personal Information (1) If the address or personal information of a licensee has changed, the licensee shall notify the department of the change on the Carry a Concealed Deadly Weapons License Request for Change of Personal Information Form (KSP 121).

(2) The request form shall be completed and signed by the licensee and submitted to the department. The form shall be signed and dated, and the date, time, and place of the change shall be stated.

(3) The department shall notify the department if there is a change in the licensee’s permanent address. KRS 237.110(12) authorizes a licensee to obtain a duplicate license if the original is lost, stolen, or destroyed. KRS 237.110(14) requires an applicant to renew a license to carry a concealed deadly weapon by submitting the department’s renewal form. This administrative regulation establishes the forms and procedures for updating, replacing, and renewing a license to carry a concealed deadly weapon, (4)-(6), and the procedures for requesting a renewal of State Police to establish the procedures for (4) replacement of a lost or stolen license to carry a concealed deadly weapon, and (3) changes in required information relating to licensees to carry a concealed deadly weapon. This administrative regulation establishes the procedures and forms for these subject matters.

Section 2. Lost, Stolen, or Destroyed Carry Concealed Deadly Weapon License. (1) If a Carry Concealed Deadly Weapon license is lost, stolen, or destroyed, a licensee shall notify the department on a Request For Duplicate CCDW License Form (KSP 126).

(2) The request form shall be:
(a) Notarized; and
(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 2.
that differs from the license number on the lost or stolen license
(b) Transmit the duplicate license to the sheriff;
(c) Notify the licensee in writing that the duplicate license may
be obtained by the licensee;
1. At the office of the sheriff, and
2. After verification of identity as provided by 503 KAR 6.020,
Section 2.
Section 2. Change of Address. (1) If the address of a licensee
changes, the licensee shall notify the department of the change
of address on "CCDW Change Of Personal Information Form."
(2) The "CCDW Change Of Address Form" shall be:
(a) Completed and signed by the licensee in the presence of
the sheriff, and
(b) Notarized by the sheriff.
(3) The sheriff shall verify the change of address as provided
by 503 KAR 6.020, Section 3.
(4) The completed "CCDW Change Of Personal Information
Form" shall be:
(a) Signed by the sheriff and
(b) Transmitted by the sheriff to the department pursuant to
503 KAR 6.020, Section 10.
Section 3. Notice of Renewal. (1) The department shall trans-
mit a "CCDW Notice of Renewal Form" to a licensee.
(2) The "CCDW Notice of Renewal Form" shall be:
(a) Completed and signed by the licensee in the presence of
the sheriff, and
(b) Notarized by the sheriff.
(2) The sheriff shall:
(a) Verify the address of the licensee as provided by 503 KAR
6.020, Section 3;
(b) Sign the completed "CCDW Notice of Renewal Form"; and
(c) Transmit the completed "CCDW Notice of Renewal Form" to
the department pursuant to 503 KAR 6.020.
Section 4. Incorporation by Reference. (1) The following mate-
rial is incorporated by reference:
(a) "CCDW Request for Lost/Stolen License Replacement
Form (8/13/06);"
(b) "CCDW Change of Personal Information Form (8/13/06);" and
(c) "CCDW Notice of Renewal Form (8/13/06);"
(2) The material may be inspected, copied, or obtained at the
Department of State Police, 1250 Louisville Road, Frankfort, Ken-
tucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006
11 a.m.
PUBLIC NOTICE AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on the
21st day of December, 2006 at 9:30 a.m. at Kentucky State Police
Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.
Individuals interested in being heard at this hearing shall notify this
agency in writing by the 14th day of December, 2006, five work-
days prior to the hearing, of their intent to attend. If you have a
disability for which the Department of State Police needs to provide
accommodations, please notify us of your requirement by the 14th
day of December, 2006. This request does not have to be in writ-
ing. 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 to the contact person.

CONTACT PERSON: Karen Howard, Justice and Public
Safety Cabinet, Office of Legal Services, 125 Holmes Street, Sec-
ond Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-
6685.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard

(1) Provide a brief summary of:
(a) What this administrative regulation does:
This administrative regulation establishes the forms and proce-
dures for updating the personal information of a carry concealed
deadly weapon license, replacing a lost, stolen, or destroyed
license, and renewing a license to carry a concealed deadly
weapon pursuant to KRS 237.110.
(b) The necessity of this administrative regulation: KRS
237.110(1) requires carry concealed deadly weapon licensees to
notify the Department of State Police of a change of address or
other personal information on the license within thirty days of
the change. KRS 237.110(12) authorizes a licensee to obtain a dupli-
cate license if the original is lost, stolen, or destroyed. KRS
237.110(14) establishes the requirements for renewal of a carry
concealed deadly weapon license. This administrative regulation
establishes the forms and procedures for updating the personal
information, for replacing a lost, stolen, or destroyed license, and
for renewal of a license to carry a concealed Deadly weapon in the
Commonwealth of Kentucky.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation sets forth
the procedures to be followed by the licensees, county sheriffs,
and the Department of State Police for changing licensee personal
information, replacing lost, stolen, or destroyed licenses, and
renewing a carry concealed deadly weapon license.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This admin-
istrative regulation sets forth the procedures to be followed by the
licensees, county sheriffs, and the Department of State Police for
changing licensee personal information, replacing lost, stolen, or
destroyed licenses, and renewing a carry concealed deadly
weapon license.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: It updates the required forms and clarifies the proce-
dures used to update, replace, or renew a CCDW license.
(b) The necessity of the amendment to this administrative regulation:
To implement KRS 237.110(11), (12), and (14).
(c) How the amendment conforms to the content of the author-
izing statutes: It updates the required forms and clarifies the proce-
dures used to update, replace, or renew a CCDW license.
(d) How the amendment will assist in the effective administra-
tion of the statute: It updates the required forms and clarifies the
procedures used to update, replace, or renew a CCDW license.
(3) List the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administra-
tive regulation: All persons who seek to update their personal in-
formation or replace or renew a license to carry a concealed deadly
weapon pursuant to KRS 237.110, all county sheriffs, and the De-
partment of State Police.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administra-
tive regulation or amendment: No additional action required.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): For licensees, by statute, there is a duplicate license fee
of $15 and a renewal fee of $50 but there are no additional fees est-
blished by the regulation.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): Applicants will obtain updated,
duplicita, or renewed licenses.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: The costs of implementation of this administrative
regulation shall be paid for by moneys generated by the concealed
deadly weapon license program and collected by the Department
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JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(AMENDMENT)

502 KAR 11:060. License denial and reconsideration process.

RELATES TO: KRS 237.110(3)-(4)-(6)
STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS
237.110(9) requires the department to deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the statutory requirements for licensing and to reconsider its denial of an application upon the applicant’s submission of documentation relating to the application. This administrative regulation establishes the procedures for denial, notification of denial, reconsideration, and relevant forms. (6) requires the Department of State Police to: (1) deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the requirements for licensure established by KRS 237.110(2), (3), and (10); and (2) reconsider its denial of an application upon the applicant’s submission of documentation relating to the application. This administrative regulation establishes the procedure for denial, notification of denial, reconsideration, and relevant forms.

Section 1. If the department determines that it will deny an application for a license because an applicant fails to meet criteria specified in KRS 237.110(3) or (4), the department shall notify the applicant on a Denial Flashpad:
(1) Of the reason the license is denied; and
(2) That the applicant may request reconsideration by the department by completing the "Request for Reconsideration Section" of the Denial Flashpad in the presence of the sheriff within thirty (30) days of the date of the Denial Flashpad.

Section 2. If an applicant completes the Request for Reconsideration Section of the Denial Flashpad, the sheriff shall:
(1) Place the completed Denial Flashpad and related material, if applicable, in a single applicant packet; and
(2) Transmit the completed single applicant packet to the department on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs.

Section 3. If the department determines that the request for reconsideration is valid and that the applicant is not disqualified from being issued a license, it shall issue a license as set forth in 502 KAR 11 010, Section 11.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Denial Flashpad," November 2006; and
(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," July 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. If the department determines that it will deny an application for a license because an applicant fails to meet criteria specified in KRS 237.110(3)(a), (b), (c), (d), (e), (f), (g), (h), (9) and (10), the department shall notify the applicant and sheriff on a Notice of Denial Form:
(1) Of the reason the license is denied; and
(2) That the applicant may request reconsideration by the department by completing the "Request for Reconsideration Section" of the Notice of Denial Form in the presence of the sheriff.

Section 2. If an applicant completes the "Request for Reconsideration Section" of the Notice of Denial Form, the sheriff shall:
(1) Place the completed Notice of Denial Form and related material, if applicable, in a single applicant packet provided by the department, and
(2) Transmit the completed single applicant packet to the department on the date established by the "Mailing Schedule.
Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) Notice of Proposal Form, and
   (b) "Guidelines and Procedures for CDW's; Notice of Proposed Rule (841/2/26).
   (2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
PUBLISHED WITH LBC: November 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of December, 2006 at 9:30 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 14th day of December, 2006, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 14th day of December, 2006. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 2nd day of January, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to this person.

CONTACT PERSON: Karen Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Howard
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the procedures for denial of an application for a carry concealed deadly weapon license, notification of denial, reconsideration of the denial, and relevant forms.
   (b) The necessity of this administrative regulation: KRS 237.110(9) requires the department to deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the statutory requirements for licensure and to reconsider its denial of an application upon the applicant's request for reconsideration and submission of documentation relating to the application. This administrative regulation establishes the forms and procedures necessary for compliance with these statutory requirements.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs, and the Department of State Police in regard to denial, notification of denial, reconsideration of the denial, and relevant forms.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs and the Department of State Police in regard to denial, notification of denial, reconsideration of the denial, and relevant forms.
   (2) If 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 updates statutory references and required forms. It also specifies the thirty day timeframe required by statute that a licensee may request reconsideration by the department of its denial of a CDW application.
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LICENSE.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for license.

(c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.

(d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCPO program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to improve coverage upgrades in future years which would otherwise greatly exceed annual revenue.

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

Revenues (+): Expenditures (+): Other Explanation: See (4)(a)-(d) for explanation.

JUSTICE AND PUBLIC SAFETY COUNCIL
Department of State Police
(Amendment)

502 KAR 11:070. License revocation and suspension notice and reinstatement process.

RELATES TO KRS 237.110 and 237.110(4)(b)
STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(13)(a) requires the department to revoke a license to carry a concealed firearm or other deadly weapon if the license becomes permanently ineligible to be issued a license or a license renewed under the criteria established by KRS 237.110. KRS 237.110(13)(d) requires the department to suspend a license to carry a concealed firearm or other deadly weapon if the license becomes temporarily ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. This administrative regulation establishes the procedures for the revocation or suspension by the department of a license to carry a concealed deadly weapon and for reinstatement of a revoked or suspended license, (10) requires the Department of State Police to revoke a license to carry a concealed firearm or other deadly weapon if the licensee fails to meet the criteria established by KRS 237.110(2) and (3). This administrative regulation establishes the: (1) procedures for the revocation by the department of a license to carry a concealed deadly weapon; and (2) reinstatement of a revoked license.

Section 1. If the department determines that it will revoke a license, the department shall notify the licensee on a Revocation Flashpak:

(1) Of the reason for the revocation;
(2) That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the revocation notice;
(3) That failure of the licensee to surrender a revoked license is a Class A misdemeanor; and
(4) That the licensee may request reconsideration of the revocation by the department by completing the “Request for Reconsideration Section of the Suspension Flashpak” in the presence of the sheriff within thirty (30) days of the date of the Revocation Flashpak.

Section 2. If the department determines that it will suspend a license, the department shall notify the licensee on a Suspension Flashpak:

(1) Of the reason for the suspension;
(2) That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the suspension notice;
(3) That failure of the licensee to surrender a suspended license is a Class A misdemeanor; and
(4) That the licensee may request reconsideration of the suspension by the department by completing the “Request for Reconsideration Section of the Suspension Flashpak” in the presence of the sheriff within thirty (30) days of the date of the Suspension Flashpak.

Section 3. If a licensee completes the “Request for Reconsideration Section of the Revocation Flashpak or the Suspension Flashpak, the sheriff shall:

(1) Place the completed Revocation Flashpak or the Suspension Flashpak and related material, if applicable, in a single applicant packet and:
(2) Transmit the completed single applicant packet to the department on the date established by the CCDW-LECSA Application Mailing Schedule For Sheriff.

Section 4. If the request for reconsideration of the revocation or suspension is denied, the department shall:

(1) Notify the licensee in writing and
(2) Inform the licensee of his or her right to petition the Board of the Kentucky State Police for reconsideration by requesting an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the denial letter.

Section 5. License Expiration Date. If a license is revoked or suspended, the date of its expiration shall not be extended.

Section 6. (1) A revoked or suspended license shall be reinstated by the department upon:
(a) Receipt of an order from the appropriate court to terminate the revocation of suspension;
(b) Determination by the department to reinstate the license after a request for reconsideration of the revocation or suspension;
(c) Receipt of an order from the appropriate KRS Chapter 13B hearing officer to return the license and abrogate the suspension or revocation.

(2) If a license is reinstated, the department shall notify the applicant.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Revocation Flashpak,” November 2006;
(b) “Suspension Flashpak,” November 2006; and
(c) "CCDW-LECSA Application Mailing Schedule For Sheriff’s Office, 07/06;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. If the department determines that it will revoke a license, the department shall notify the licensee and sheriff on a “Notice of Revocation Form”:

(1) Of the reason for the revocation;
(2) The date of revocation;
(3) That the licensee may request reconsideration of the revocation by the department by completing the “Request for Reconsideration Section” of the “Notice of Revocation Form” in the presence of the sheriff.

Section 2. If a licensee completes the “Request for Reconsideration Section” of the “Notice of Revocation Form,” the sheriff shall:

(1) Place the completed “Notice of Revocation Form” and related material, if applicable, in a single applicant packet provided by the department and
(2) Transmit the completed “single applicant packet” to the department on the date established by the "Mailing Schedule
Section 3. License Expiration. If a license is revoked, the date of its expiration shall not be extended.

Section 4. (1) A revoked license shall be reinstated by the department upon:
(a) Receipt of an order from the appropriate court to terminate the revocation;
(b) Determination by the department to reinstate the license after a request for reconsideration of the revocation;
(2) If a license is reinstated, the department shall notify the applicant in writing.

Section 5. Incorporation by Reference. The following material is incorporated by reference:
(a) Notice of Revocation Form (8/13/06); and
(b) Mailing Schedule Form (8/13/06).
(2) The material may be inspected, copied, or obtained at the Department of State Police, 1250 Florence Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of December, 2006 at 9:30 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 14th day of December, 2006, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 14th day of December, 2006. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 2nd day of January, 2007. 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: Karen Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Karen Howard
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures for revocation and suspension of a carry concealed deadly weapon license, requests for reconsideration, and relevant forms.
(b) The necessity of this administrative regulation: KRS 237.110(13)(a) requires the department to revoke a license to carry a concealed firearm or other deadly weapon if the licensee becomes permanently ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. KRS 237.110(13)(b) requires the department to suspend a license to carry a concealed firearm or other deadly weapon if the licensee becomes temporarily ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. This administrative regulation establishes the procedures for the revocation or suspension by the department and relevant forms.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs, and the Department of State Police in regard to revocation, suspension, notification, requests for reconsideration, and relevant forms.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures to be followed by the licensees, county sheriffs, and the Department of State Police in regard to revocation, suspension, notification, requests for reconsideration, and relevant forms.
(2) If 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 updates the required forms, adds procedures for suspension of a CCDW license, and requires the department to notify licensees of their rights to request reconsideration and an administrative hearing regarding a license revocation or suspension.
(b) The necessity of the amendment to this administrative regulation: KRS 237.110(13) requires the department to revoke or suspend a CCDW license under certain circumstances.
(c) How the amendment conforms to the content of the authorizing statutes: It updates the required forms, adds procedures for suspension of a CCDW license, and requires the department to notify licensees of their rights to request reconsideration and an administrative hearing regarding a license revocation or suspension.
(d) How the amendment will assist in the effective administration of the statutes: It updates the required forms, adds procedures for suspension of a CCDW license, and requires the department to notify licensees of their rights to request reconsideration and an administrative hearing regarding a license revocation or suspension.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All carry concealed deadly weapon licensees whose licenses have been revoked or suspended and wish to request reconsideration, all county sheriffs, and the Department of State Police.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of State Police will have to comply with the suspension and notice procedures.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
Minimal, if any, costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of State Police will have procedures to revoke and suspend CCDW licenses when directed to do so by statute. Licensees will be aware of the procedures to appeal the revocation or suspension.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(b) On a continuing basis: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
(7) Provide an assessment of whether an 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, see response to 5(a).
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).
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(9) TIERING: Is being applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.110

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue is directly dependent on the number of applicants for licensure.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue is directly dependent on the number of applicants for licensure.
   (c) How much will it cost to administer this program for the first year? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police.
   (d) How much will it cost to administer this program for subsequent years? The costs of implementation of this administrative regulation shall be paid for by moneys generated by the concealed deadly weapon license program and collected by the Department of State Police. The CCW program is revenue and cost neutral. If revenue exceeds costs for a particular year, it is rolled over to cover equipment upgrades in future years which would otherwise greatly exceed annual revenue.

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

Revenues (+/):
Expenditures (+/+):
Other Explanation: See (4)(a)-(d) for explanation.

EDUCATION CABINET

Kentucky Commission on the Deaf and Hard of Hearing

(AMENDMENT)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired.

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations, in compliance with federal mandates, to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the commission to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment [device]. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access [TDD Distribution] Program.

(2) "Application" means the current KCDHH Telecommunications Access [TDD-Distribution] Program application entitled "Telecommunications Access [TDD-Distribution] Program Application and Certification".

(3) "Audiodigest" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program [TDD-Distribution] staff.

(6) "Deaf" and "hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" is defined at KRS 334.010(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(11) "Physician" means a person:
   (a) With a medical degree;
   (b) Licensed by the state in which he or she practices medicine; and
   (c) Recognized, by the state Board of Medical Licensure in the state in which he or she practices, as a specialist in:
   1. Family practice;
   2. General practice; or
   3. Otolaryngology.

(12) "Recipient" means a person who receive[s] specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access [TDD-Distribution] Program.

(13) "Specialized telecommunications equipment" or "SIE" means ready-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications services, such as:
   (a) Telecommunication devices for the deaf [TDDs];
   (b) Amplifiers;
   (c) Voice Carry Over telephones;
   (d) Captioned telephones;
   (e) Visual, audible, or tactile ring signal devices; and
   (f) Appropriate wireless devices. (d) TDDs with large visual display;

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized telecommunications equipment" or "SIE"
   [Telecommunication device for the deaf or "TDD"] is defined by KRS 163.525(1)(a).

(16) "Telecommunications Access [TDD-Distribution] Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:
   (a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following:
   1. Possession of a Kentucky driver's license;
   2. Registered to vote in Kentucky;
   3. Kentucky automobile registration;
   4. Filing of Kentucky income tax return for the calendar year preceding the date of application;
   5. A member of the Armed Forces, and his or her dependents, stationed in Kentucky on active military orders for at least one (1) year;
   6. If a student enrolled at an institution of higher learning located in Kentucky meets the residency requirements of 13 KAR 2 045;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall: - 1706 -
1. Apply on behalf of the child; and
2. Assume full responsibility for the equipment; and
(c) Deaf, hard of hearing or speech impaired such that the
candidate cannot use the telephone for communication without
adaptive specialized telecommunications equipment.
(2) An application shall be:
(a) Made on a "Telecommunications Access [TDD-Distribution]
Program Application and Certification" form, incorporated by refer-
ence;
(b) Signed and submitted in person or by mail;
(c) Accompanied by:
1. A copy of a telephone bill showing telephone number and
name and address of the person being billed;
2. A copy of the applicant's proof of residence;
3. Document of certification, as required by subsection (3) of
this section; and
4. Any other necessary supporting document required by the
KCDHH.
(3) An applicant shall provide professional certification of the
extent and permanence of the applicant's disability.
(a) Certification shall be at the applicant's expense.
(b) Certification shall be performed and provided by:
1. A licensed physician;
2. A licensed audiologist;
3. A licensed speech-language pathologist;
4. A licensed hearing instrument specialist; or
5. A public or private agency providing direct services to deaf,
hard of hearing, or speech-impaired individuals, subject to approval
by the KCDHH.
(4) Except for an individual receiving assistance from a pro-
gram providing telephone services to persons normally unable to
afford the services, an applicant shall subscribe to, or have cur-
rently applied for, telephone service, including:
(a) Installation of a telephone line in the applicant's home, at
the applicant's expense; and
(b) Payment of monthly telephone bills.
(5) Eligible applicants shall be awarded program participation
on a first-come, first-serve basis, in accordance with the approved
date, as determined by the datesignature of the Telecommunica-
tions Access Program [TDD-Distribution] staff. Applicants shall be
placed on a waiting list during times of fiscal constraint.
(6) KCDHH shall distribute the STE in compliance with:
(a) The Model Procurement Code, KRS Chapter 45A; and
(b) 735 KAR 1:020.
(7) Not more than two (2) STEs one (1) of which shall be a
visual, auditory, or tactile signaler, shall be distributed to a deaf,
hard of hearing, or speech-impaired individual for one (1) residen-
tial access line only. (One-(1) additional visual or tactile signaler
shall be distributed to a deaf or hard-of-hearing individual only.)

Section 3. Application and Certification Procedures. The follow-
ing information shall be included on each application form the ap-
licant shall be required to sign:
(a) The "Telecommunications Access [TDD-Distribution]
Program has a limited amount of funds.
(b) There is a possibility that applicants may be placed on a
waiting list, due to a large number of applications.
(c) Funds may be exhausted in any given year.
(d) Subject to the availability of funds, each STE shall be dis-
tributed on a nondiscriminatory, first-come, first-served basis.
(e) The "Telecommunications Access [TDD-Distribution]
Program shall distribute not more than two (2) STEs per indi-
vidual for each residential telephone line.

Section 4. Application Process. (1) The KCDHH staff shall
provide assistance in completing forms if requested by an ap-
licant.
(2) The "Telecommunications Access [TDD-Distribution]
Program staff shall review each application in the order the KCDHH
office receives them, in order to determine:
(a) All the necessary information is completed on the applica-
tion;
(b) All required documentation is included; and
(c) All eligibility requirements are met.
(3) An approved application shall be dated and signed by the
Telecommunications Access [TDD-Distribution] Program staff. The
approved date shall determine the first-come, first-serve roster.
(4) The KCDHH shall, within sixty (60) days of receipt of the
application, notify an applicant if the application has been approved
or rejected.
(5) The KCDHH shall, within sixty (60) days of receipt of the
application, provide to an ineligible applicant, written reasons for
the determination of ineligibility. An applicant denied participation
may reapply if, due to a change in conditions, the eligibility re-
quirements as delineated in Section 2 of this administrative regula-
tion are met.
(6) Training to properly select and use the STE shall be pro-
vided to applicants upon request.

Section 5. An application shall be denied if:
(1) The applicant does not meet the eligibility requirements as
established in KRS 163.525, this administrative regulation or 735
KAR 1:040 and 1:020;
(2) The applicant has received STE from the Telecommunica-
tions Access [TDD-Distribution] Program within the preceding four
years;
(3) The applicant is an active consumer of the Office [Depart-
ment] of Vocational Rehabilitation and receives a STE as part of an
individual plan of employment, also known as an "IPA";
(4) The applicant has negligently or willfully damaged a STE
previously received from the KCDHH's Telecommunications Ac-
cess [TDD-Distribution] Program, or has violated another provision
of the law governing the Telecommunications Access [TDD-Distri-
bution] Program;
(5) The applicant fails to provide a police report of a stolen
device or refuses to cooperate with the police investigation in the
prosecution of the suspect, including the refusal to testify in court
when subpoenaed to do so;
(6) The applicant is found negligent in a police report of a stolen
device, such as doors to the house or car left unlocked or unat-
tended;
(7) The applicant has lost or sold the STE; or
(8) In the case of replacing the equipment after four (4) years
have passed, the original STE is found to be technologically up
to date and functional by the KCDHH.

Section 6. Replacing the Specialized Telecommunications
Equipment. During times of fiscal constraint a reapplication shall be
accepted and held pending until funds become available. An appli-
cant shall provide verification of eligibility at the time the reappli-
cation is processed.
(1) A recipient may apply to replace the original STE if:
(a) The STE is damaged as a result of a natural disaster;
(b) There is a change in status, such as deteriorating vision or
hearing;
(c) A new device has become available through the Telecommunica-
tions Access [TDD-Distribution] Program that is more appro-
ropriate to the recipient's disability than a device previously re-
ceived through the program; or
(d) It has been four (4) years since the applicant last received
STE.
(2) As funds are available, new STE to replace existing STE
shall be issued to applicants who:
(a) Demonstrate eligibility; and
(b) Comply with the provisions of the administrative regulations
governing the Telecommunications Access [TDD-Distribution] Pro-
gram: established in this administrative regulation and 1:020 and
735 KAR 1:040.
(3) Priority shall be given in the distribution of STE to first-time
recipients during times of fiscal constraint.
(4) If a replacement is requested because the STE is damaged
as a result of a natural disaster:
(a) The recipient shall first send the damaged equipment to the
KCDHH, or directly to the vendor as directed by Telecommunica-
tions Access [TDD] program staff.
(b) If necessary, the KCDHH shall send the damaged STE to the
vendor for verification of unreparability.
(c) If the vendor certifies to the KCDHH that the equipment

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provided to the recipient is unrepairable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:
1. Equipment availability;
2. Compliance with eligibility criteria established in this administrative regulation, and
3. The first-come, first-served provision; and
4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access [TDD-Distribution] Program due to a change in disability status or a new device being made available, then a replacement shall be issued to the applicant based on first-come, first-served and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:
(a) Notify local police within thirty (30) days of the theft; and
(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and
(c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect is identified.

(7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.
(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.
(b) If the original STE is:
   1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation [731-KAR 4:06] and 731-KAR 1:020 of the KCDHH Telecommunications Access [TDD-Distribution] Program thereafter.

Section 7. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access [TDD-Distribution] Program thereafter.

Section 8. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, Telephone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, Monday through Friday, 8 a.m. to 4:30 p.m.

BOBBIE BETH SCOGGINS, Executive Director
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2006, at 10 DST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 January 2, 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: Dr. Bobbie Beth Scoggins, Executive Director, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/f, fax (502) 573-3594.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person, Bobbie Beth Scoggins, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the criteria for awarding specialized telecommunication equipment (STE) to deaf, hard of hearing, or speech-impaired individuals, and includes application and certification procedures.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost between a single party line and an individual.
(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 procedures for the distribution of STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for awarding STE to deaf and hard of hearing constituents in Kentucky and includes the application and certification procedures.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment changes the name of the distribution program to match KRS 163.525 and is more inclusive of all consumers with a hearing loss and conforms to national standards for other state program names.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the name of the program. Program costs will not change.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment reflects the current name of the distribution program operated by KCDHH, per KRS 163.525.
(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the program to conform to national standards for naming state distribution programs. The previous name of the program primarily reflected one subgroup of the deaf and hard of hearing population rather than the total population served.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for STE throughout the Commonwealth are affected by this regulation. The program has had more than 11,000 applicants to date. Vendors, which supply the equipment distributed by the program via contract, are partially supported by funds allocated by the program, however the amendment will have no affect on this support. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth refer consumers to the program for assistive devices and will not otherwise be affected by this amendment.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any action to comply with the amendment to this regulation as it is a program change only. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth will continue to refer consumers to the program for assistive devices, and will not be affected by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no change to the program costs due to the name change in this amendment and it will not impact costs for the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since the program's implementation in 1996 the program has evolved to serve consumers that are 90% hard of hearing, speech impaired or defined as other than "deaf." Consumers who are hard of hearing, late deafened, oral, deaf blind or speech impaired are better represented by the program name change as it is more inclusive of the entity's hard of hearing community. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth will continue to refer consumers to the program for assistive devices, and will not be affected by the amendment.

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

(a) Initially: Indirect costs to the KCDHH after implementation of this amendment is minimal because the revenues generated by the telephone surcharge covers all direct costs.

(b) On a continuing basis: The funds allocated annually (estimated at $400,000 through FY 07-08) are used to implement the administrative regulation on an ongoing basis. Printing costs for hardcopy materials containing the name change, such as the application, enforcement, and incorporated in the ongoing program budget. Continued indirect costs include 10% of the Executive Director's time to supervise the administration of this program. Two full-time staff positions to maintain ongoing program functions are funded by the telephone surcharge.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Public Service Commission oversees the funding mechanism for the administration the Telecommunications Access program. A two-cent surcharge on all residential access lines, provided by local telephone exchange carriers, funds the program through FY 07-08. $400,000 annually, through FY 07-08, is allocated to administer 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 increase in fees occurs and no funding increase is required to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is applied in times of 'fiscal constraint,' which is defined as 75% (seventy-five percent) of program funds being disbursed or encumbered. The program is currently not operating under fiscal constraint and does not expect to be under fiscal constraint through FY 07-08.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applicants for specialized telecommunications equipment (STE) throughout the Commonwealth are affected by this regulation amendment in that it reflects a more comprehensive representation of the population served. The Telecommunications Access program (TAP) has had more than 11,000 applicants to date, since implementation in 1995. Vendors, which supply the equipment distributed by the program via contract with the state, are partially supported by funds allocated by the program; however the amendment will have no affect on this support as it is a name change only. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth refer consumers to the TAP for assistive devices but will not be affected by this amendment as it is a name change only.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: State statutory authority: KRS 163.525.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Indirect costs to the KCDHH after implementation of this amendment is minimal because the revenue generated by the telephone surcharge covers costs. There is no effect on the expenditures and revenues of state or local government agencies who refer consumers to the TAP for STE.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Public Service Commission oversees the funding mechanism for the administration the TAP. A two-cent surcharge on all residential access lines, provided by local telephone exchange carriers, funds the program through FY 07-08. $400,000 annually, through FY 07-08, is allocated to KCDHH to administer the program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Funding for FY 08-09 will decrease to $252,000 annually if the surcharge is reduced, and will remain the same at $400,000 annually if the surcharge is maintained during FY 08-09 and ongoing.

(c) How much will it cost to administer this program for the first year? Cost to administer this program during FY 06-07 are budgeted at $400,000.

(d) How much will it cost to administer this program for subsequent years? $400,000 is allocated to run this program during FY 07-08. Funding will be reviewed during FY 07-08 and a determination made by the Public Service Commission as to funding increase or decrease.

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

Revenues (+/-): In compliance with KRS 163.527 the program's annual report to the Legislative Research Commission reported $252,000 in revenues for FY 05-06.

Expenditures (+/-): In compliance with KRS 163.527 the program's annual report to the Legislative Research Commission reported $251,615 in expenditures for FY 05-06.

Other Explanation: None

EDUCATION CABINET

Kentucky Commission on the Deaf and Hard of Hearing (Amendment)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.


STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations, in compliance with federal mandates, to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the commission to promulgate administrative regulations to establish procedures for application for, and distribution of, telecommunications devices.
This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for the maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access [TDD-Distribution] Program.

(2) "Application" means the current KCDHH Telecommunications Access [TDD-Distribution] Program application entitled "Telecommunications Access [TDD-Distribution] Program Application and Certification".

(3) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access [TDD-Distribution] Program staff.

(6) "Deaf" and "hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" is defined at KRS 334A.020(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(11) "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized by the state Board of Medical Licensure as the state in which he or she practices, as a specialist in:

1. Family practice;
2. General practice; or
3. Otolaryngology.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access [TDD-Distribution] Program.

(13) "Specialized telecommunications equipment" or "STE" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications services, such as:

(a) Telecommunication devices for the deaf (TDDs);

(b) Amplifiers;

(c) Voice Carry Over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Wireless devices. (6) TDDs with large visual display.

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized Telecommunications Equipment" or "STE" [Telecommunications device for the deaf or "TDD"] is defined by KRS 163.525(1)(e).

(16) "Telecommunications Access [TDD-Distribution] Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to applicants and vendors.

(3) The KCDHH Telecommunications Access [TDD-Distribution] Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation. (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipients' Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient. An person who attempts to sell, or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the five (5) year warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1. Purchase or lease a telephone;

2. Pay each month's telephone bill;

3. Purchase batteries and paper for the Specialized Telecommunications Equipment [TDD]; and

4. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access [TDD-Distribution] Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged.

(2) If the equipment is stolen, the recipient shall:

(a) Notify local police within thirty (30) days of the theft; and

(b) Forward a copy of police report to the KCDHH within ten (10) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH Telecommunications Access [TDD-Distribution] Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the manufacturer;

(b) Ask that the manufacturer pay for shipping the defective equipment.

1. To the manufacturer's designated place of repair; and

2. Back to the recipient, once repaired.

(3) The contracted repair agent shall notify the recipient that the STE is repaired, or is not repairable, and shall provide verification of the transaction to the KCDHH. If the warranty period has ended, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

BOBBIE BETH SCOGGINS, Executive Director
APPROVED BY AGENCY: November 14, 2006
VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

FILED WITH LFC: November 15, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2006, at 10 DST, at the Kentucky Commission on the Deaf and Hard of Hearing office located at 632 Versailles Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 be made unless the 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 January 2, 2007. 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: Dr. Bobbie Beth Scoggins, Executive Director, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 v/t, fax (502) 573-3594.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bobbie Beth Scoggins, Executive Director

1. a) Number of entities affected: This administrative regulation affects the telecommunications entities identified in question (3). The entities who will be affected by this regulation are those that are required to provide service for deaf, hard of hearing, and speech impaired individuals.

b) Cost to the public: This administrative regulation will not impose any cost on the public.

2. a) What this administrative regulation does: This administrative regulation establishes the criteria for awarding specialized telecommunication equipment (STE) to deaf, hard of hearing or speech impaired individuals, and includes application and certification procedures.

b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.325 which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech impaired person qualified to receive the equipment.

c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the content of the authorizing statute by establishing procedures for the distribution of STE to any deaf, hard of hearing, or speech impaired person qualified to receive the equipment.

d) How this administrative regulation currently assists or will assist in the effective implementation of the statute: This administrative regulation establishes the criteria for awarding STE to deaf, hard of hearing, and speech impaired individuals in Kentucky and includes the application and certification procedures.

3. a) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: This amendment changes the name of the distribution program to match KRS 163.325 and is more inclusive of all consumers with a hearing loss and conforms to national standards for other state program names.

b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the name of the program. Program costs will not change.

4. a) How the amendment conforms to the content of the authorizing statute: The amendment reflects the current name of the distribution program operated by KCDHH, per KRS 163.325.

b) How the amendment will assist in the effective implementation of the statute: The amendment allows the program to conform to national standards for naming state distribution programs. The previous name of the program primarily reflected one subgroup of the deaf and hard of hearing population rather than the total population served.

5. a) If the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for STE throughout the Commonwealth are affected by this regulation. The program has had more than 11,000 applicants to date. Vendors, which supply the equipment distributed by the program via contract, are partially supported by funds allocated by the program; however the amendment will have no effect on this support. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth refer consumers to the program for assistive devices and will not otherwise be affected by this amendment.

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

(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities identified in question (3) will not have to take any action to comply with the amendment to this regulation as it is a program name change only. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth will continue to refer consumers to the program for assistive devices, and will not be affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since the program’s implementation, the program has awarded STE to 90% of hard of hearing, speech impaired or deaf. Consumers who are hard of hearing, late deafened, oral, deaf blind or speech impaired are better represented by the program name change as it is more inclusive of the entire deaf and hard of hearing community. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth will continue to refer consumers to the program for assistive devices, and will not be affected by the amendment.

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

(i) Initially: Indirect costs to the KCDHH after implementation of this amendment is minimal because the revenues generated by the telephone surcharge covers all direct costs.

(ii) On a continuing basis: The funds allocated annually (estimated at $400,000 through FY 07-08) are used to implement the administrative regulation on an ongoing basis. Printing costs for hardcopy materials containing the name change, such as the application itself, are incorporated in the ongoing program budget. Continued indirect costs include 10% of the Executive Director’s time to oversee the administration of this program. Two full time staff positions to maintain ongoing program functions are funded by the telephone surcharge.

(e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Public Service Commission oversees the funding mechanism for the administration the Telecommunications Access Program. A two-cent surcharge on all residential access lines, provided by local telephone exchange carriers, funds the program through FY 07-08. $400,000 annually, through FY 07-08, is allocated to administer the program.

(f) Provide an assessment of whether an 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 occurs and no funding increase is required to implement this amendment.

(g) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by this amendment.

(h) TIERING: Is tiering applied? Tiering is applied in times of fiscal constraint, which is defined as 75% of program funds being disbursed or encumbered. The program is currently not operating under fiscal constraint and does not expect to be under fiscal constraint through FY 07-08.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applicants for specialized telecommunications equipment (STE) throughout the Commonwealth are affected by this regulation amendment. In that it reflects a more comprehensive representation of the population served. The Telecommunications Access program (TAP) has had more than 11,000 applicants to date, since implementation in 1995. Vendors, which supply the equipment distributed by the program via contract with the state, are partially supported by funds allocated by the program; however the amendment will have no affect on this support as it is a name change only. Agencies and organizations, both state and local, that provide support services for deaf, hard of hearing and speech impaired individuals throughout the Commonwealth refer consumers to the TAP for assistive devices but will not be affected by this amendment as it is a name change only.

3. Identify each state or federal statute or regulatory that requires or authorizes the action taken by the administrative regulation. State statutory authority: KRS 163.525.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Indirect costs to the KCDHH after implementation of this amendment is minimal because the revenue generated by the telephone surcharge covers costs. There is no effect on the expenditures and revenues of state or local government agencies that refer consumers to the TAP for STE.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Public Service Commission oversees the funding mechanism for the administration of the TAP. A two-cent surcharge on all residential access lines, provided by local telephone exchange carriers, funds the program through FY 07-08. $400,000 annually, through FY 07-08, is allocated to KCDHH to administer the program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Funding for FY 06-07 will decrease to $252,000 annually if the surcharge is reduced, and will remain at $400,000 annually if the surcharge is maintained during FY 08-09 and ongoing.

(c) How much will it cost to administer this program for the first year? Cost to administer this program during FY 06-07 are budgeted at $400,000.

(d) How much will it cost to administer this program for subsequent years? $400,000 is allocated to run this program during FY 07-08. Funding will be reviewed during FY 07-08 and a determination made by the Public Service Commission as to funding increase or decrease.

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

Revenue (+/-): In compliance with KRS 163.527 the program's annual report to the Legislative Research Commission reported $252,000 in revenues for FY 05-06.

Expenditures (+/-): In compliance with KRS 163.527 the program's annual report to the Legislative Research Commission reported $251,616 in expenditures for FY 05-06.

Other Explanation: None
A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing and written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 3, requires employers covered by KRS Chapter 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.3 through 1910.7. Section 3 of this administrative regulation has been amended to include changes made by OSHA to 29 C.F.R. 1910.6, which removes and reserves paragraphs (e)(31); (e)(35); (e)(48); (f)(1); and (i)(2), as published in the September 13, 2006, Federal Register. These changes are related to the removal of three references to national consensus standards and two references to industry standards found in the OSHA standards:

- Changes to OSHA standards 1910.100, 1910.105, 1910.142, 1910.243, 1910.254, and 1910.265. These 5 references are to consensus or industry standards issued over 35 years ago and in one case over 60 years ago. Some are no longer available to the public through the issuing Standards Development Organization (SDO). Three of the references have been withdrawn by their issuing SDOs and not replaced. OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that the revocations would not result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule in order to promote consistency and provide employers and employees with a clear understanding of the regulations. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion from OSHA standards of three references to national consensus standards and two references to industry standards will clarify employer obligations under the applicable regulations and reduce administrative burdens on employers. OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. These revisions are part of OSHA's overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 3, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.3 through 1910.7. Section 3 of this administrative regulation has been amended to include changes made by OSHA to 29 C.F.R. 1910.6, which removes and reserves paragraphs (e)(31); (e)(35); (e)(48); (f)(1); and (i)(2), as published in the September 13, 2006, Federal Register. These changes are related to the removal of three references to national consensus standards and two references to industry standards found in the following OSHA standards:

- Changes to OSHA standards 1910.100, 1910.105, 1910.142, 1910.243, 1910.254, and 1910.265. These 5 references are to consensus or industry standards issued over 35 years ago and in one case over 60 years ago. Some are no longer available to the public through the issuing Standards Development Organization (SDO). Three of the references have been withdrawn by their issuing SDOs and not replaced. OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that the revocations would not result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule in order to promote consistency and provide employers and employees with a clear understanding of the regulations. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion from OSHA standards of three references to national consensus standards and two references to industry standards will clarify employer obligations under the applicable regulations and reduce administrative burdens on employers. OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. These revisions are part of OSHA's overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the employees and public sector employers in the Commonwealth covered by KRS Chapter 338 and engaged in general industry activities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulatory responsibilities under this administrative regulation. The changes enacted by this administrative regulation are related to the removal of three references to national consensus standards and two references to industry standards found in the following OSHA standards:

- Changes to OSHA standards 1910.100, 1910.105, 1910.142, 1910.243, 1910.254, and 1910.265. These five references are to consensus or industry standards issued over 35 years ago and in one case over 60 years ago. Some are no longer available to the public through the issuing Standards Development Organization (SDO). Three of the references have been withdrawn by their issuing SDOs and not replaced. OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that the revocations would not result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.
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In additional costs to employers.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA reported that the changes to 29 C.F.R. 1910.6 may produce cost savings resulting from reduced administrative burdens, eliminating confusion, and clarifying employer obligations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no initial cost to implement this administrative regulation.
(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding

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

(6) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(8) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. Kentucky’s Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in general industry operations.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, 29 C.F.R. 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? As published in the September 13, 2006, Federal Register, OSHA determined that the changes to 29 C.F.R. 1910.6 will not result in additional costs to employers.
(d) How much will it cost to administer this program for subsequent years? As published in the September 13, 2006, Federal Register, OSHA determined that the changes to 29 C.F.R. 1910.6 will not result in additional costs to employers.

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

Revenues (+/-). There will be no increase or decrease in local government revenues as a result of this administrative regulation. Expenditures (+/-): As published in the September 13, 2006, Federal Register, OSHA determined that the changes to 29 C.F.R. 1910.6 will not result in additional costs to employers.
Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Occupational Safety and Health (Amendment)


STRICTLY AUTHORITY: KRS 338.051(3), 338.061(2), 29 C.F.R. Part 1910

NECESSARY, FUNCTION, AND CONFORMITY: [EO-2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet.] KRS 338.051(3) requires [authorized the Kentucky Occupational Safety and Health Board to promulgate hazardous materials (material standards to be enforced by the Office of Occupational Safety and Health, Division of [Occupational Safety and Health] Compliance in the area of general industry.]

Section 1. Definitions. (1) "Assistant secretary" means the Commissioner of the Department of Labor, Commonwealth of Kentucky.
(2) "Employee" is defined in KRS 338.015(2).
(3) "Employer" is defined in KRS 338.015(1).
(4) "Standard" is defined in KRS 338.015(3).

Section 2. General industry shall comply with the following requirements of 29 C.F.R. Part 1910.101 - 1910.126, revised as of
Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3)(2).

(2) Automotive service station, or service station, means that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, and accessories and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.101 through 1910.106(a)(3), revised as of July 1, 2004;
(b) 29 C.F.R. 1910.106(a)(4) through 29 C.F.R. 1910.128, revised as of July 1, 2004;
(c) The revisions to 29 C.F.R. 1910.103, as published in the June 4, 2004, Federal Register, Volume 69, Number 110.

(2) This material is respected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.]

PHILLIP ANDERSON, Chairman
APPROVED BY AGENCY: October 17, 2006
FILED WITH LRC: October 25, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m. ET at the Kentucky Department of Labor, 1047 U.S. Highway 127, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 shall be given an opportunity to present 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.101 - 1910.126. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.106, Flammable and combustible liquids, as published in the September 13, 2006, Federal Register. OSHA has revoked from 1910.106 the reference to American Petroleum Institute (API) Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A). OSHA reported that API 12A is over 50 years old and does not consider recent developments in the construction of atmospheric tanks. The API withdrew API 12A in 1974, has not replaced it, and has not incorporated its provisions into another consensus standards, and no longer makes the standard available to the public. Because OSHA did not require the use of API 12A in the standard, the revocation does not change an employer's responsibility for constructing properly designed atmospheric tanks under 29 C.F.R. 1910.106(b)(1)(ii)(a). OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that this revocation will result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.
(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1926 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its meeting in November, meeting the requirements of this amendment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338 051 and 338.061.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated and unavailable American Petroleum Institute Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A) from 29 C.F.R. 1910.106 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA's overall effort to update its standards that reference or include language taken directly from outdated consensus standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment to this existing administrative regulation: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.101 - 1910.126. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.105, Flammable and combustible liquids, as published in the September 13, 2006, Federal Register. OSHA has revoked from 1910.105 the reference to API Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A). OSHA reported that API 12A is over 50 years old and does not consider recent developments in the construction of atmospheric tanks. The API withdrew API 12A in 1974, has not replaced it, has not incorporated its provisions into another consensus standards, and no longer makes the standard available to the public. Because OSHA did not require the use of API 12A in the standard, the revocation does not change an employer's responsibility for constructing properly designed atmospheric tanks under 29 C.F.R. 1910.106(b)(1)(ii)(a). OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that this revocation will result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.
(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1926 and 1953 to be at least as ef-
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effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.055.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated and unavailable American Petroleum Institute Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A) from 29 C.F.R. 1910.106 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee health by eliminating confusion and clarifying employer obligations. This revision is part of OSHA’s overall effort to update its standards that reference or that include language taken directly from outdated consensus standards.

3. Cost of the rule and number of likely covered employers, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth covered by KRS Chapter 338, engaged in general industry activities, and who conduct operations which utilize flammable and combustible liquid atmospheric storage tanks covered under 29 C.F.R. 1910.106.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulatory responsibilities under this administrative regulation. The change enacted by this administrative regulation is related to the removal of the reference to the outdated and unavailable American Petroleum Institute Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A) from 29 C.F.R. 1910.106.

(b) By complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA has determined that this change to 29 C.F.R. 1910.106 will not result in additional costs to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA reported that this change to 29 C.F.R. 1910.106 may produce cost savings resulting from reduced administrative burdens, eliminating confusion, and clarifying employer obligations.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

9. TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all private and public sector employers in the Commonwealth covered by KRS Chapter 338, engaged in general industry activities, and who conduct operations which utilize flammable and combustible liquid atmospheric storage tanks which are covered under 29 C.F.R. 1910.106.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.051, 29 C.F.R. 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first
year? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.106 will not result in additional costs to employers.

(d) How much will it cost to administer this program for subsequent years? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.106 will not result in additional costs to employers.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this administrative regulation.

(b) How much will it cost to administer this program for the first year? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.106 will not result in additional costs to employers.

Other explanation: Not applicable.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Occupational Safety and Health
(Amendment)

803 KAR 2:309. General environmental controls.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. [KRS 338.061(2)]-provides that the board may adopt established federal standards and national consensus-standards. 29 C.F.R. 1910.141 through 1910.147 establishes the federal requirements relating to general environmental controls. This administrative regulation establishes the general environmental controls standards to be enforced by the Office of Occupational Safety and Health, Division of Compliance in the area of general industry.

Section 1. Except as provided in Section 2 and [re] 3 of this administrative regulation, general industry shall comply with 29 C.F.R. 1910.141 to 1910.147, revised as of July 1, 2006 [2006], and relating to general environmental controls.

Section 2. Construction of Water Closets. (1) The requirements relating to construction of water closets in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).

(2) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

Section 3. Lockout. (1) The requirements relating to the utilization of lockout procedures in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(i).

(2) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(3) The requirements relating to tag location in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(4) Full employee protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked out, the tag attachment shall be fastened at the same point at which the lock would have been attached.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: October 17, 2006
FILED WITH AGENCY: October 25, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m. ET at the Kentucky Department of Labor, 1047 U.S. Highway 127, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify OSHA in writing five working days prior to the hearing. The notice shall contain the name of the party and the address to which notice shall be sent. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40661, phone (502) 564-3070, fax (502) 564-1892.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.141 through 1910.147. Section 1 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.142, Temporary labor camps, as published in the September 13, 2006, Federal Register. OSHA has revoked from 1910.142 a requirement that drinking fountains be constructed in accordance with the American National Standard Institute Standard (ANSI) Specifications for Drinking Fountains, ANSI Z4.2-1942. ANSI Z4.2-1942 contains 15 specific recommendations concerning the construction of drinking fountains which are based on the technology and construction practices that existed in 1942. ANSI withdrew the standard in 1972, and it has not been replaced. OSHA has determined that the reference to ANSI Z4.2-1942 should be revoked for 2 reasons. First, because the specific recommendations in ANSI Z4.2-1942 use advisory language, they are unenforceable. Second, referencing recommendations issued over 60 years ago for the construction of drinking fountains does not enhance the safety and health of employees. Since 1942, a number of drinking fountain units have become available to employers that were not specifically manufactured in accordance with ANSI Z4.2-1942, are constructed pursuant to good engineering practices and are safe to use at temporary labor camps. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that this change will not result in additional costs to employers and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1922 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2005, meeting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-
trative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated and unavailable ANSI, Standard Specifications for Drinking Fountains, ANSI Z4.2-1942 from 29 C.F.R. 1910.142 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA’s overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.141 through 1910.147. Section 1 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.142. Temporary labor camps, as published in the September 13, 2006, Federal Register, OSHA has revoked from 1910.142 a requirement that drinking fountains be constructed in accordance with the ANSI Specifications for Drinking Fountains, ANSI Z4.2-1942. ANSI Z4.2-1942 contains 10 specific recommendations concerning the construction of drinking fountains which are based on the technology and construction practices that existed in 1942. ANSI withdrew the standard in 1972, and it has not been replaced. OSHA has determined that the requirement to ANSI Z4.2-1942 should be revoked for 2 reasons. First, because the specific recommendations in ANSI Z4.2-1942 use advisory language, they are unenforceable. Second, referencing recommendations issued over 60 years ago for the construction of drinking fountains does not enhance the safety and health of employees. Since 1942, a number of drinking fountain units have become available to employers that do not meet the standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated and unavailable American National Institute Standard Specifications for Drinking Fountains, ANSI Z4.2-1942 from 29 C.F.R. 1910.142 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA’s overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

(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 private and public sector employers in the Commonwealth covered by KRS Chapter 338, engaged in general industry activities, and who operate temporary labor camps covered under 29 C.F.R. 1910.142.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulatory responsibilities under this administrative regulation. The changes enacted by this administrative regulation are related to the removal of the reference to the outdated and unavailable ANSI Standard Specifications for Drinking Fountains, ANSI Z4.2-1942 from 29 C.F.R. 1910.142.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) as published in the September 13, 2006, Federal Register, OSHA has determined that this change to 29 C.F.R. 1910.142 will not result in additional costs to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) as published in the September 13, 2006, Federal Register, OSHA reported that this change to 29 C.F.R. 1910.142 may produce cost savings resulting from reduced administrative burdens, eliminating confusion, and clarifying employer obligations.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is being applied? TIERING is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub. L. 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and pro-
provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts) to be in effect in the first full year the administrative regulation is to be in effect. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this administrative regulation.

Expenditures (+/-): As published in the September 13, 2006, Federal Register, OSHA has determined that this change to 29 C.F.R. 1910.142 will not result in additional costs to employers.

Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
(Amendment)

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061[-29 C.F.R. Part 1910]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 requires [and 338.061 authorizes] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accom-

plish the purposes of KRS Chapter 338. [Express authority in incorpora-
tion by reference established federal standards and national consensus standards is also given to the Board.] The following administrative regulation contains those standards to be enforced by the Office of Occupational Safety and Health, Division of [Occupational Safety and Health] Compliance in the area of general industry.

Section 1. Definitions [Applicable to this Part]. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Commissioner (Secretary) of the Department of Labor, Commonwealth of Kentucky.

(3) "Employee" is defined by KRS 338.015(2) [means any person employed except those employees excluded in KRS 338.021].

(4) "Employer" is defined in KRS 338.015(1) [means any entity for whom a person is employed except those employers excluded in KRS 338.021].

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government:

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" is defined in KRS 338.015(3) [means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. A "Standard" has the same meaning as and includes the words "regulation" and "rule").

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor (Cabinet: Office of Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601).

Section 2. General industry shall comply with the requirements of 29 C.F.R. 1910.241-1910.246, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation. [Incorporation by Reference]. (1) The following materials are incorporated by reference:


(2) The material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127, South, Frankfort, Kentucky 40601, Office hours are 8 a.m.-4:30 p.m. (ET), Monday through Friday.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: October 17, 2006

FILED WITH LRC: October 25, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m. ET at the Kentucky Department of Labor, 1047 U.S. Highway 127, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received...
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by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.241 - 1910.246. Section 2 of this administrative regulation has been amended to include changes made by OSHA to 29 C.F.R. 1910.243, Guarding of portable power tools, as published in the September 13, 2006, Federal Register. OSHA has revoked a provision that certain power lawnmowers designed for use in general public meet the American National Standard Safety Specifications (ANSI) for Power Lawnmowers, ANSI B71.1 - X1968 (ANSI B71.1-1968). OSHA replaced this provision with a reference to the general machine guarding requirements contained in 29 C.F.R. 1910.212. OSHA also removed the final 2 sentences of paragraph 1910.243(a)(1) that describe the types of mower for which the specifications in ANSI B71.1-1968 do not apply. OSHA is making these changes to simplify and clarify the scope and coverage of 29 C.F.R. 1910.243. Deleting the reference and replacing it with a reference to 29 C.F.R. 1910.212 will both retain the existing degree of employee protection and remove a continuing source of confusion as to the scope of the referenced standard. Furthermore, virtually all of the specific provisions contained in ANSI B71.1-1968 are included in the text of 29 C.F.R. 1910.243(a). OSHA also determined that these revocations will not result in additional costs to employers and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is amended by OSHA to 29 C.F.R. 1910.243, Guarding of portable power tools, as published in the September 13, 2006, Federal Register. OSHA has revoked a provision that certain power lawnmowers designed for use in general public meet the American National Standard Safety Specifications for Power Lawnmowers, ANSI B71.1 - X1968 (ANSI B71.1-1968). OSHA replaced this provision with a reference to the general machine guarding requirements contained in 29 C.F.R. 1910.212. OSHA also removed the final 2 sentences of paragraph 1910.243(a)(1) that describe the types of mowers for which the specifications in ANSI B71.1-1968 do not apply. OSHA is making these changes to simplify and clarify the scope and coverage of 29 C.F.R. 1910.243. Deleting the reference and replacing it with a reference to 29 C.F.R. 1910.212 will both retain the existing degree of employee protection and remove a continuing source of confusion as to the scope of the referenced standard. Furthermore, virtually all of the specific provisions contained in ANSI B71.1-1968 are included in the text of 29 C.F.R. 1910.243(a). OSHA also determined that these revocations will not result in additional costs to employers and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment assists this administrative regulation to the content of the authorizing statutes: This administrative regulation is amended by OSHA to 29 C.F.R. 1910.243, Guarding of portable power tools, as published in the September 13, 2006, Federal Register. OSHA has revoked a provision that certain power lawnmowers designed for use in general public meet the American National Standard Safety Specifications for Power Lawnmowers, ANSI B71.1 - X1968 (ANSI B71.1-1968). OSHA replaced this provision with a reference to the general machine guarding requirements contained in 29 C.F.R. 1910.212. OSHA also removed the final 2 sentences of paragraph 1910.243(a)(1) that describe the types of mowers for which the specifications in ANSI B71.1-1968 do not apply. OSHA is making these changes to simplify and clarify the scope and coverage of 29 C.F.R. 1910.243. Deleting the reference and replacing it with a reference to 29 C.F.R. 1910.212 will both retain the existing degree of employee protection and remove a continuing source of confusion as to the scope of the referenced standard. Furthermore, virtually all of the specific provisions contained in ANSI B71.1-1968 are included in the text of 29 C.F.R. 1910.243(a). OSHA also determined that these revocations will not result in additional costs to employers and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(d) How the amendment assists in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. These changes will clarify and simplify the scope and coverage of 29 C.F.R. 1910.243. Deleting the reference to ANSI B71.1-1968 and replacing it with a reference to 29 C.F.R. 1910.212 will both retain the existing degree of employee protection and remove a continuing source of confusion as to the scope of the referenced standard. Furthermore, virtually all of the specific provisions contained in ANSI B71.1-1968 are included in the text of 29 C.F.R. 1910.243(a). OSHA reported that these changes will enhance employee safety by eliminating confusion and clarifying employer obligations. These revisions are part of OSHA’s overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public employees engaged in general industry operations covered by KRS Chapter 338, are engaged in general industry activities, and operate power lawnmowers covered under 29 C.F.R. 1910.243.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,
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including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulatory responsibilities under this administrative regulation. The changes enacted by this administrative regulation are related to the regulatory level of reference to the American National Standards Institute Standard Specifications for Drinking Fountains, ANSI B71.1–1968 from 29 C.F.R. 1910.243.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA has determined that these changes to 29 C.F.R. 1910.243 will result in additional costs to employers. (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA reported that these changes to 29 C.F.R. 1910.243 may produce cost savings resulting from reduced administrative burdens, eliminating confusion, and clarifying employer obligations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no initial cost to implement this regulation.
(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.
(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, Pub. L. 91-596, the Occupational Safety and Health Act of 1970, Section 18, 29 C.F.R. 1952.11.

2. State compliance standards. Kentucky's Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA has encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA has encouraged Kentucky to adopt the revisions promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all private and public sector employers in the Commonwealth covered by KRS Chapter 338, are engaged in general industry activities, and operate power line workers covered under 29 C.F.R. 1910.243.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, and 29 C.F.R. 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administration? KRS 338.051, KRS 338.061, and 29 C.F.R. 1953.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? As published in the September 13, 2006, Federal Register, OSHA determined that these changes to 29 C.F.R. 1910.243 will not result in additional costs to employers.

(d) How much will it cost to administer this program for subsequent years? As published in the September 13, 2006, Federal Register, OSHA determined that these changes to 29 C.F.R. 1910.243 will not result in additional costs to employers.

Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Occupational Safety and Health (Amendment)

803 KAR 2:316. Welding, cutting, and brazing.

RELATES TO: KRS 338 051(3), 338.061, 29 C.F.R. 1910.251

- 1910.255

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 requires [and 338.061 authorizes] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. [KRS 338.061(9) provides that this board may incorporate by reference established federal standards and national consensus standards is also given to the board.] The following administrative regulation contains those standards to be enforced by the Office of Occupational Safety and Health, Division of [Occupational Safety and Health] Compliance in
the area of general industry.

Section 1. Definitions [Applicable to the Part]. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Commissioner [Secretary] of the Department of Labor, Commonwealth of Kentucky.

(3) "Employee" is defined in KRS 338.015(2) [means any person employed except those employees excluded in KRS 338.021].

(4) "Employer" is defined in KRS 338.015(1) [means any entity for whom a person is employed except those employers excluded in KRS 338.021].

(5) "Established federal standard" means any operable occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" is defined in KRS 338.015(3) [means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the word regulation and rule].

(8) "U.S. Department of Labor" means Kentucky Department of Labor [ Cabinet], U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. General industry shall comply with the requirements of 29 C.F.R. Parts 1910.251 through 1910.255, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation. [Incorporated by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.251-267, Subpart Q, "Welding, Cutting, and Brazing", revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration is incorporated by reference.

(b) The revisions to 29 C.F.R. 1910.204, "General Requirements", as published in the Federal Register, Volume 63, Number 6, January 8, 1998, are incorporated by reference.

(c) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m.-4:30 p.m. (ET), Monday through Friday.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: October 17, 2006
FILED WITH LRC: October 25, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m. ET at the Kentucky Department of Labor, 1047 U.S. Highway 127, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.251 - 1910.255. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.254, Arc welding and cutting, as published in the September 13, 2006, Federal Register. OSHA has revoked a recommendation in 1910.254 that employers be acquainted with the American Welding Society's Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1-1966. OSHA noted that the hazard information included in AWS A6.1-1966 is extremely outdated, particularly compared to the information that employers are already required to provide to employees under OSHA's Hazard Communication Standard, 29 C.F.R. 1910.1200. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health program is mandated to be at least as effective as OSHA. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(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, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.251 - 1910.255. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.254, Arc welding and cutting, as published in the September 13, 2006, Federal Register. OSHA has revoked a recommendation in 1910.254 that employers be acquainted with the American Welding Society's Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1-1966. OSHA noted that the hazard information included in AWS A6.1-1966 is extremely outdated, particularly compared to the information that employers are already required to provide to employees under OSHA's Hazard Communication Standard, 29 C.F.R. 1910.1200. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health program is mandated to be at least as effective as OSHA. This administrative regulation is also updated to meet KRS Chapter 13A considerations.
Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the American Welding Society’s Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, from 29 C.F.R. 1910.254 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA’s overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

(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 private and public private contractors in the Commonwealth covered by KRS Chapter 338, are engaged in general industry activities, and conduct arc welding and cutting operations as covered by 29 C.F.R. 1910.254.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulatory responsibilities under this administrative regulation. The changes enacted by this administrative regulation are related to the removal of the reference to American Welding Society’s Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, from 29 C.F.R. 1910.254.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA has determined that this change to 29 C.F.R. 1910.254 will not result in additional costs to employers.

(5) What units, particularly the state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all state, part, or division of local government which is covered by KRS 338, are engaged in general industry operations, and who conduct arc welding and cutting operations as covered under 29 C.F.R. 1910.254.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(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: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(9) State whether, or not this administrative regulation establishes new fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

1. Federal mandate analysis comparison

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.


2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1915 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? None.

2. What units, particularly the state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all units, part, or division of local government which is covered by KRS 338, are engaged in general industry operations, and who conduct arc welding and cutting operations as covered under 29 C.F.R. 1910.254.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, 29 C.F.R. 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much cost to administer this program for the first year? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.254 will not result in additional costs to employers.

(d) How much cost will it cost to administer this program for subsequent years? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.254 will not result in additional costs to employers.
1910.254 will not result in additional costs to employers.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this administrative regulation.

Expenses (+/-): As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.254 will not result in additional costs to employers.

Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Occupational Safety and Health
(Amendment)

803 KAR 2:317. Special Industries.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS chapter 338. [KRS 338.061(2) authorizes the board to adopt established federal standards and national consensus standards.] 29 C.F.R. Parts 1910.261 to 1910.272 establish the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Office of Occupational Safety and Health Division of Compliance in the area of general industry.

Section 1. Definitions. (1) "Assistant Secretary" means the Commissioner of the Department of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Standard" is defined in KRS 338.015(3).

Section 2. General industry shall comply with 29 C.F.R. 1910.261 through 1910.272, revised as of July 1, 2006 (2006), as modified by the definitions established in Section 1 of this administrative regulation.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: October 17, 2006
FILED WITH LRC: October 25, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006, at 11 a.m. ET at the Kentucky Department of Labor, 1047 U.S. Highway 127, Frankfort, Kentucky. Individuals interested in being heard at this hearing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.261 - 1910.272. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.265, Sawmills, as published in the September 13, 2006, Federal Register. OSHA has revoked the provision which suggests that employers use "appropriate traffic control devices," as set forth in American National Standard (ANSI) D8.1-1967 for Railroad Highways Crossing Protection (ANSI D8.1-1967). ANSI withdrew the standard in1981 and did not replace it. Also, the reference uses advisory "should" language and is thus unenforceable. Because OSHA is retaining the mandatory provision that employers plainly post railroad tracks and other hazardous crossings, employees will continue to be alerted to potential hazards at these dangerous areas. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that this change will not result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910.252 and 1915.3 to be at least as effective as OSHA's. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated American National Standard D8.1-1967 for Railroad Highways Crossing Protection (ANSI D8.1-1967) from 29 C.F.R. 1910.265 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA's overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

(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 administrative regulation, in Section 2, requires employers covered by KRS 338 and engaged in general industry operations to comply with the requirements of 29 C.F.R. 1910.261 - 1910.272. Section 2 of this administrative regulation has been amended to include a change made by OSHA to 29 C.F.R. 1910.265, Sawmills, as published in the September 13, 2006, Federal Register.

OSHA has revoked the provision which suggests that employers use "appropriate traffic control devices," as set forth in American National Standard (ANSI) D8.1-1967 for Railroad Highways Crossing Protection (ANSI D8.1-1967). ANSI withdrew the standard in1981 and did not replace it. Also, the reference uses advisory "should" language and is thus unenforceable. Because OSHA is retaining the mandatory provision that employers plainly post railroad tracks and other hazardous crossings, employees will continue to be alerted to potential hazards at these dangerous areas. OSHA reported that this change will enhance employee
safety by eliminating confusion and clarifying employer obligations. OSHA also determined that this change will not result in additional costs to employers, and may even produce cost savings. This administrative regulation is also updated to meet KRS Chapter 13A considerations.

(2) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will enhance worker health and safety throughout Kentucky and keep the state program as effective as the federal program. The deletion of the reference to the outdated American National Standard D81.1-1967 for Railroad Highways Grade Crossing Protection (D81.1-1967) from 29 C.F.R. 1910.265 will clarify employer obligations and reduce administrative burdens on employers. OSHA reported that this change will enhance employee safety by eliminating confusion and clarifying employer obligations. This revision is part of OSHA’s overall effort to update its standards that reference, or that include language taken directly from, outdated consensus standards.

(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 private and public sector employers in the Commonwealth covered by KRS Chapter 338, are engaged in general industry activities, and who conduct sawmill operations covered under 29 C.F.R 1910.265.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers will incur no additional regulation or administrative burden by this change enacted by this administrative regulation is related to the removal of the reference to the outdated and unavailable American National Standard D81.1-1967 for Railroad Highways Grade Crossing Protection (ANSI D81.1-1967) from 29 C.F.R 1910.265.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA has determined that this change to 29 C.F.R. 1910.265 will not result in additional costs to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As published in the September 13, 2006, Federal Register, OSHA reported that this change to 29 C.F.R. 1910.265 may produce cost savings resulting from reduced administrative burdens, eliminating confusion, and clarifying employer obligations.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no additional costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, Pub. L. 91-596, the Occupational Safety and Health Act of 1970, Section 16, 29 C.F.R. 1952.11.

2. State compliance standards. Kentucky’s Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1910 and 1953 to be at least as effective as OSHA. Since this amendment does not impose any additional or more stringent requirements on employers compared to the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment; however, OSHA strongly encouraged Kentucky to adopt the revision promulgated under this rule to promote consistency and provide employers and employees with a clear understanding of the requirements. The Kentucky Occupational Safety and Health Standards Board adopted this amendment at its May 9, 2006, meeting.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all private and public sector employers in the Commonwealth covered by KRS Chapter 338, are engaged in general industry activities, and who conduct sawmill operations covered under 29 C.F.R. 1910.265.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation: KRS 338.051, KRS 338.061, 29 C.F.R. 1953.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.265 will not result in additional costs to employers.
(d) How much will it cost to administer this program for subsequent years? As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.265 will not result in additional costs to employers.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this administrative regulation.

Expenditures (+/-): As published in the September 13, 2006, Federal Register, OSHA determined that this change to 29 C.F.R. 1910.265 will not result in additional costs to employers.

Other explanation: N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

805 KAR 17-480. Uniform evaluation and reevaluation of providers.

RELATES TO: KRS 205.560(12), 216B.155(2), [304.2-969], 304.17A-005, [304.17A-270], 304.17A-545(41)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-545(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-545(5) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan’s list of participating providers. This administrative regulation establishes the uniform application form and guidelines for evaluation and reevaluation of a health care provider, including a psychologist.

Section 1. Definitions. (1) “Complete Form KAPER-1 (11/2006)” [42/06], Part A* means a part of the uniform application for provider credentialing and recredentialing used by an insurer, which includes all data elements required for processing.

(2) *Executive director is defined in KRS 304.1-050(1) [mean the Executive Director of the Office of Insurance].

(3) *Evaluation or *credentialing means a:
(a) Process for collecting and verifying professional qualifications of a health care provider;
(b) Assessment of whether a health care provider meets specified criteria relating to professional competence and conduct; and
(c) Process to be completed before a health care provider may participate in a provider network of an insurer on an initial or ongoing basis.

(4) Form KAPER-1 (11/2006) [42/06] means the uniform application for credentialing or recredentialing of a health care provider pursuant to KRS 304.17A-545(5).

(5) *Health care provider* means:
(a) A health care provider pursuant to KRS 304.17A-005(22)(a); and
(b) A psychologist licensed under KRS Chapter 319.

(5) *Insurer* is defined in KRS 304.17A-005(22) [42/06].

(7) *Managed care plan* is defined in KRS 304.17A-500(9).

(8) *Office* is defined in KRS 304.1-050(12) [mean the Office of Insurance].

(9) *Participating health care provider* is defined in KRS 304.17A-500(10).

(10) *Provider network* is defined in KRS 304.17A-005(35) [42/06].

(11) *Reevaluation* or *recredentialing* means a process for identifying a change that may have occurred in a health care provider since the last evaluation or credentialing that may affect the health care provider’s ability to perform contract services.

Section 2. Guidelines for Insurer. (1) Except as established in Section 2(4), an insurer which offers a managed care plan and performs credentialing or recredentialing activities on or after January 1, 2006, shall use Form KAPER-1 (11/2006) [42/06], Part A to a credential or recredential a health care provider who defines participation in its provider network.

(2) Pursuant to subsection (1) of this section, an insurer shall:
(a) Have a mechanism for making available and accepting from a health care provider a handwritten or electronically submitted Form KAPER-1 (11/2006) [42/06], Part A for:
1. Initial credentialing; and
2. Recredentialing;
(b) Within thirty (30) days of receipt of a complete Form KAPER-1 (11/2006) [42/06], Part A, electronically or in writing:
1. Notify the health care provider of any omitted and questionable information included on the form; and
2. Offer assistance to the provider, if applicable;
(c) Within sixty (60) days of receipt of a Form KAPER-1 (11/2006) [42/06], Part A, provide notification electronically or in writing to a health care provider of the status of credentialing. This time period may be extended if, due to extenuating circumstances:
1. Additional time is required by the insurer to consider information submitted on the Form KAPER-1 (11/2006) [42/06], Part A; and
2. The health care provider is informed of the need for more time, including information relating to the extenuating circumstances which caused the delay.
(d) Provide electronic or written notification as established in paragraph (c) of this subsection every thirty (30) days after the initial notification until a final determination regarding credentialing has been issued to the health care provider; and
(e) Be prohibited from requiring:
1. Information on the Form KAPER-1 (11/2006) [42/06], Part A which is not relevant to the scope of practice, health care setting, or service of a health care provider; and
2. Routine recredentialing of a health care provider more frequently than three (3) years from the previous credentialing date.
(3) An insurer may use Form KAPER-1 (11/2006) [42/06], Part A to a credential or recredential an individual in its provider network other than a health care provider.
(4) An insurer may use the provider application form of the Council for Affordable Quality Healthcare as identified in the introduction of the KAPER-1 (11/2006) [42/06] in lieu of the KAPER-1 (11/2006) [42/06].


(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office 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’s Internet site at http://doi.ppr.ky.gov.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 13, 2006.
FILED WITH LHC: November 14, 2006 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006, five work days prior to the hearing.

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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 January 2, 2007. 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: Melea Rivera, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers.

(b) The necessity of this administrative regulation: Pursuant to KRS 304.17A-545(5), the executive director is required to promulgate an administrative regulation to establish a uniform application and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers. This administrative regulation is necessary to comply with this requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-1101(1)(c) authorizes the executive director to promulgate administrative regulations to establish a uniform application and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers. This administrative regulation establishes the required guidelines and incorporates by reference a uniform application for evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers.

(2) If 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 revise definitions and incorporate a revised version of the KAPER-1 form.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health and Family Services requested that the Office of Insurance revise the KAPER-1 form, which is incorporated by reference, to respond to the needs of hospitals which must use the KAPER-1 form to collect information and evaluate and reevaluate health care providers applying for staff privileges in their facilities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-545(5) authorizes the executive director to promulgate administrative regulations to establish a uniform application and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers. Since the executive director is authorized to promulgate an administrative regulation to establish the Form KAPER-1 to be used by health insurers and other health care providers regulated under KRS 205.560(12) and KRS 216B.155(2), it is inherent that the executive director would have the authority to revise and amend this administrative regulation based upon the needs and recommendations of the regulated entities, the Kentucky Medical Assistance Program, and the Office of Inspector General using the Form KAPER-1.

(d) How the amendment will assist in the effective administration of the statute: KRS 304.17A-545(5), requires the office to establish a uniform application for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers for use by insurers and the Kentucky Medical Assistance Program pursuant to KRS 205.560(12) and Office of the Inspector General pursuant to KRS 216B.155(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 50 licensed Insurers offering managed care health benefit plans in this state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers offering managed care plans will be required to use the revised KAPER-1 or the Provider Application form of the Council for Affordable Quality Healthcare.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Part A of the KAPER-1 form, which is the portion of the form that the Insurers offer to managed care plans have been required to use since March 2006, contains two minor changes therefore, no additional costs are anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurers will be in compliance with KRS 304.17A-545(5) and this administrative regulation.

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

(a) Initially: The cost of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(b) On a continuing basis: The cost of implementing this administrative regulation on a continuing basis is believed to be minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance.

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

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

(9) TIERING: Is being applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation to
amend the Form KAPER-1 which was developed to provide a Uniform Evaluation and Reevaluation of Providers form to be used by insurers, the Cabinet for Health and Family Services’ Medical Assistance Program, and entities regulated by the Office of Inspector General. The Cabinet for Health and Family Services and representatives from hospitals have identified some items in the Form KAPER-1 that need clarification. Therefore, these changes will impact the Office Insurance, the Medical Assistance Program, and the Office of Inspector General.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-545(5) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan’s list of participating providers. This administrative regulation establishes the uniform application form and guidelines for evaluation and reevaluation of a health care provider, including a psychologist.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance should not incur significant costs to administer this administrative regulation for the first year. The Form KAPER-1 is required to be used in the administrative regulation for the first year. The Form KAPER-1, which is incorporated by reference, is accessible to entities and providers by visiting the Office of Insurance Internet website.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance should not incur costs to administer this administrative regulation for subsequent years. Each month, the Office responds to approximately 5 questions or complaints related to the Form KAPER-1, which is incorporated by reference in this administrative regulation.

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

Revenues (+/-): Not applicable.
Expenditures (+/-): Not applicable.
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990
STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 96-862
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 and 212.210 authorizes the Cabinet for Health and Family Services to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment. EO 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health and Family Ser-

vices.

Section 1. Citation of Administrative Regulation. This administrative regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. As used in this administrative regulation the following definitions shall apply:

(1) "Cabinet" means the Cabinet for Health and Family Services and its designated agents.

(2) "Local Board of Education" means a duly elected or appointed board, any private agency, or organization that operates, controls, or supervises a school or system of schools.

(3) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities shall include only those areas used for school purposes.

(5) "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facility (including) and not made a fixed portion of any existing school structure.

(6) "Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 100°F.

Section 3. Water Supply. (1) The water supply shall be potable and from an approved public water supply (or a municipality or water district). If available, if an approved [a public water supply (or a municipality or water district) is available, the supply for the school shall be developed and approved pursuant to applicable requirements of the [Natural Resources and] Environmental and Public Protection Cabinet; if an approved [a public water supply (or a municipality or water district) subsequently becomes available, connections shall be made to it and the school supply shall be discontinued.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3) Alternative delivery methods may be used only in schools of thirty-five (35) or less and only with formal written approval by the Environmental and Public Protection Cabinet.

(4) All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable drinking water containers may be used. If portable drinking water containers are used, they shall be of easily cleanable construction, kotted securely closed and designed so that water may be withdrawn from the container only by water tap or faucet, and shall be maintained in a sanitary condition. If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available. If a public sewer is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet and the [Natural Resources and] Environmental and Public Protection Cabinet; if a public sewer system subsequently becomes available, connections shall be made to it and the school sewage disposal system shall be discontinued.

(2) All plumbing shall comply with the State Plumbing Code.

(3) All private sewage disposal systems shall be operated in a manner that does not create a nuisance or possible hazard to public health.
(4) Alternative methods may be used only in schools of thirty-five (35) or less and with formal written approval by the Cabinet for Health and Family Services.

(5) All waste paper and solid waste shall be disposed of so as not to create a health or safety hazard and in a manner approved by the [Natural Resource and] Environmental and Public Protection Cabinet.

(6) [61] Containers shall be provided in all classrooms and hallways for storage of solid waste. All bulk solid waste shall be stored in containers, adequate in number, with tight-fitting lids. All bulk solid waste storage areas shall be constructed and maintained to prevent the entry and harborage of insects, rodents, and other vermin. All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and hand-washing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair.

(4) A minimum of twenty (20) foot-candles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Dishwashing paper towels, cloth wall towels or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All hand-washing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities pursuant to the requirements of the State Plumbing Code.

(7) For schools of thirty-five (35) or less and where the school prides do not have running potable water under pressure, the pupils shall be supplied with potable water from an approved public water supply or an approved water supply in the nurse for handwashing purposes from an insulated container, or sufficient volume, with a spout, used in an approved sanitary manner.

(8) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type HVAC systems, ventilation, and air-cleaning systems shall have self-closing doors.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor.

<table>
<thead>
<tr>
<th>Task or Area</th>
<th>Foot-candle Levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage rooms</td>
<td>10</td>
</tr>
<tr>
<td>Hallways, stairways, auditoriums</td>
<td>20</td>
</tr>
<tr>
<td>General classrooms, gymnasiums,</td>
<td>50</td>
</tr>
<tr>
<td>and enclosed swimming pools</td>
<td></td>
</tr>
</tbody>
</table>

In certain areas such as industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially if safety hazards are present.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleansed using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) School buildings shall be maintained free of insect, rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(4) Schools with [ten (10)] or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, and student's sack lunches. This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(5) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments. All exits [eves] shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

   a) Compresses and bandages to include:
      1. A one (1) inch compress on adhesive, [ ]
      2. Assorted sterile bandage compresses in individual packages, [ ]
      3. Triangular bandages [ (two (2) x two (2)] and (four (4) x four (4)]
      4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.
      b) Wire or thin board splints [ ]
      c) Adhesive tape, [ ]
      d) Scissors, [ ]
      e) Forceps (two (2) Inch splinter), [ ]
      f) Toothpicks, [ ]
      g) Paper cups, [ ]
      h) Disposable facial tissues, [ ]
      i) Aromatic splints of ammonia, [ ]
      j) Thermometer, [ ]
      k) Soap, [ ]
      l) Petroleum jelly, [ ]
      m) Biohazard waste bags, [ ]
      n) Nonlatex gloves,
      o) Cotton balls,
      p) One-way resuscitation mask,
      q) Water source or normal saline, [ ]
      r) Ice packs (chemical ice bags), [ ]
      s) Reusable plastic bags, [ ]
      t) Telephone number of the nearest poison control center, [ ]
      u) Safety pins and;
      v) Flashlight with spare batteries.

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member

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shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If a representative of the cabinet makes an inspection of a school, he shall record his findings on [an official cabinet inspection report] Form DFS-301, [2] "School Inspection Report," and provide the principal or head teacher with a copy. The inspection report shall:

(a) Set forth the specific violation(s) if found;
(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;
(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in further action being taken; and
(d) Advise the party inspected of its right to request a hearing on Form DFS-212, [1] "Request for Hearing" before the cabinet. The request shall be filed within ten (10) days of the completed inspection.

(3) All administrative hearings shall be conducted in accordance with 502 KAR 1:400.

(4) Following inspections of school buildings and premises required by this administrative regulation, the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing schools on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM HACKER, MD., Commissioner
APPROVED BY AGENCY: November 7, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street S W-5, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Vonla L. Grabee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools.

(b) The necessity of this administrative regulation: This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 211.160 to enforce the administrative regulations promulgated by the secretary of the cabinet for Health and Family Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for sanitation requirements and the inspection process for schools in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow small rural schools of 35 or less children to use alternative methods in order to meet the requirements of existing sanitation regulations.

(b) The usefulness of the unwritten text to this administrative regulation: Without this amendment there would be no latitude for schools of 35 or less children to apply alternative methods to meet the requirements of existing sanitation regulations and schools could not be opened.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment carries out the intent and provision of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth minimum sanitary standards for schools in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all new schools built to accommodate 35 or less children.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will build their schools to meet the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of building the schools and operating and maintaining the school in a safe and sanitary manner will not change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Safe and sanitary schools.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Schools are currently exempt from permitting fees and remain so under this change.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Counties in which these schools are located.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.160 and 212.210.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue will be realized by this amendment.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None, schools are exempt from permitting fees.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? No additional amount.
(d) How much will it cost to administer this program for subsequent years? No additional amount.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Expenditure: The regulation is part of what public health is funded to do. No additional fees or costs are required to implement this regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General (Amendment)


STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule III controlled substances.

Section 1. Amphetamine and Methamphetamine Combination Products: The Cabinet for Health and Family Services designates the following amphetamine and methamphetamine combination products as Schedule III Controlled Substances:
(1) A tablet or capsule containing:
(a) Methamphetamine hydrochloride 1 mg.;
(b) Conjugated estrogens-equine 0.25 mg.; and
(c) Methyl testosterone 2.5 mg.
(2) A liquid containing, in each 15 cc:
(a) Methamphetamine hydrochloride 1 mg.;
(b) Conjugated estrogens-equine 0.25 mg.; and
(c) Methyl testosterone 2.5 mg.

Section 2. Stimulants: The Cabinet for Health and Family Services designates as a Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of those isomers if the existence of the salts, isomers or salts of isomers is possible within the specific chemical designation:
(1) Benzphetamine;
(2) Chlorphenetermine;
(3) Chlortermine; and
(4) Phenmetrazine.

Section 3. Depressants: The Cabinet for Health and Family Services designates as Schedule III controlled substance depressants the following:
(1) A material, compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital, or any of their salts, and at least one (1) other active medicinal ingredient which is not a controlled substance;
(2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository;
(3) A drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Chapter 9. Gamma hydroxybutyric acid is also known as:
(a) GHB;
(b) Gamma-hydroxybutyrate;
(c) 4-hydroxybutyrate;
(d) 4-hydroxybutyric acid; and
(e) Sodium oxybuxinate.

Section 4. Pentazocine Drug Products: The Cabinet for Health and Family Services designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a Schedule III controlled substance by KRS 218A.090(3), a material, compound, mixture, or preparation which contains a quantity of Pentazocine, including its salts.

Section 5. Anabolic Steroids: The Cabinet for Health and Family Services designates as Schedule III Controlled Substances, in addition to those listed in KRS 218A.090(5), a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers, if the existence of salts of isomers is possible within the specific chemical designation:
(1) Chlorotestosterone;
(2) Dihydrotestosterone; and
(3) Methandranone.

Section 6. Hallucinogenic Substances: The Cabinet for Health and Family Services designates as Schedule III controlled substances, in addition to those listed in KRS 218A.090, a material, compound, mixture, or preparation which contains a quantity of dronabinol (synthetic) In sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product. Dronabinol is also known as:
(1) [4]-Cannabicyclo[2.2.1]hept-5-en-2-yl-acetic acid (THC-11-carboxylate).
(2) (S)-Delta-9-tetrahydrocannabinol.

Section 7. Narcotics: The Cabinet for Health and Family Services designates as Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of

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Section 8 Central Analgesics. The Cabinet for Health and Family Services designates as a Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of Tramadol or its salts.

ROBERT J. BENVENUTI III, Esq., Inspector General
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006

FILED WITH LRC: November 15, 2006 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 January 2, 2007. 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: Steven D. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates Schedule III controlled substances.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to regulate and control, and track the dispensation of Schedule III controlled substances.
(c) How this administrative regulation conforms to the content of the authorizing statute: The Cabinet for Health and Family Services is responsible for the development of a schedule of controlled substances based upon the potential for abuse.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health and Family Services administers KRS Chapter 218A, which authorizes the scheduling of controlled substances based on the potential for abuse.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will add the central analgesic drug Tramadol to the Schedule III controlled substances list.
(b) The necessity of the amendment to this administrative regulation: Initiation of this amendment originated with health care professionals and Kentucky citizens, who seek help in controlling and preventing abuse of Tramadol.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment recognizes that central analgesic drug Tramadol has significant abuse potential, and inclusion on the Schedule III list will help reduce the risk to public health.
(d) How the amendment will assist in the effective administration of the statutes: With this amendment, the Cabinet for Health and Family Services is carrying out its responsibility to establish and amend the schedule of controlled substances, based upon abuse potential.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every dispenser of controlled substances will be affected by this administrative regulation amendment, including physicians, pharmacists, and retail pharmacies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question three will be required to lawfully dispense Tramadol and may be subject to penalties for the unauthorized, illegal dispensation of the Schedule III drug.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? This administrative regulation may only nominally and temporarily increase costs as the entities identified in question three need only develop appropriate safeguards and protocols, as with all other Schedule III drugs, for dispensation of Tramadol.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question three will receive benefits based upon the deterrent effect of including Tramadol in the list of Schedule III controlled substances. This should decrease the opportunities for abuse as it will create a disincentive for unauthorized use.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There will be no additional cost to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost associated with this administrative regulation on an ongoing basis.

(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 now, or by the change if it is an amendment: There will be no increase in fees or funding required to implement this change to the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not appropriate because this administrative regulation applies equally to all dispensers of Controlled Substances.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Affected government units, parts, and divisions include the Cabinet for Health and Family Services, local law enforcement, and state counties' attorney.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 21 C.F.R. 1308.13, 21 U.S.C. 801, 812.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local government during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local government during subsequent years.
(c) How much will it cost to administer this program for the first
year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation: This administrative regulation has no fiscal impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division Of Public Health Protection and Safety
(Amendment)

902 KAR 105:040. General radiation operator requirements
[Medical, osteopathic or chiropractic supervision].

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services [Human Resources] is authorized by KRS 211.870, 211.890, 211.993 to regulate the operation (operators) of a source [sources] of radiation other than a licensed practitioner [practitioners] of the healing arts, including but not limited to: The classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform standards for the certification of individuals who operate sources of radiation for human diagnostic radiologic and therapeutic [radiography] purposes while under the supervision of a medical, osteopathic, or chiropractic licensed practitioner of the healing arts.

Section 1. Applicability. This administrative regulation shall apply to individuals who operate sources of radiation for human diagnostic radiologic or therapeutic [radiography] purposes while under the supervision of a medical, osteopathic, or chiropractic licensed practitioner.

Section 2. General Certification Required to Perform Contrast Procedures [Studies]. Only individuals holding a general certificate shall operate sources of radiation at facilities where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed.

Section 3. Eligibility for a General Certificate. No person shall be eligible for a general certificate as an operator of a source of radiation for human diagnostic radiologic or therapeutic [radiography] purposes [under the supervision of a medical, osteopathic or chiropractic-licensed practitioner] unless the person [has] has:

(1) Satisfactorily completed a four (4)-year course of study in a secondary school or passed a standard equivalency test; and

(2) Satisfactorily completed a course of study in radiography, nuclear medicine technology, radiation therapy, or radiologist assistant [medical, osteopathic or chiropractic-radiography] approved by the cabinet as described in 902 KAR 105:030 (and based upon two (2) years of full-time study. The course shall include classroom work in the following subjects: x-ray physics, radiographic exposure, fluoroscopy, equipment and techniques, anatomy and physiology, radiation protection, patient positioning, film critique, ethics, radiation biology and patient care. The course shall also include an adequate number of hours to demonstrate clinical competency. Clinical experience shall consist of instruction through demonstrations and supervised practice; and

(3) Satisfactorily passed an examination [conducted or] approved by the cabinet as prescribed in 902 KAR 105:020, Section 6(2).

Section 4. Eligibility for a Limited Certificate. No person shall be eligible for a limited certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a medical or osteopathic or chiropractic-licensed practitioner unless he has:

(1) Satisfactorily completed a four (4)-year course of study in a secondary school or passed a standard equivalency test; and

(2) Satisfactorily completed a limited course of study in medical, osteopathic, or chiropractic-radiography approved by the cabinet through an institutional or independent study course.

(a) The approved institutional course of study shall include not less than 140 hours of classroom work including the following subjects: x-ray physics, radiographic exposure, darkroom chemistry and technique, anatomy and physiology, radiation protection, patient positioning, film critique, ethics, radiation biology and patient care. The course shall also include an adequate number of hours but not less than 260 to be devoted to clinical experience consisting of demonstrations, discussions, seminars and supervised practice; or

(b) The approved independent study course shall include but not be limited to the following subjects: x-ray physics, radiographic exposure, darkroom chemistry and technique, anatomy and physiology, radiation protection, patient positioning, film critique, ethics, radiation biology and patient care. Clinical experience can be obtained by performing a minimum of fifty (50) radiographic examinations in each of the following areas: chest, extremities and musculoskeletal. This experience shall be obtained at the individual's place of employment, an alternate facility or a combination of the two (2) The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator. Clinical experience can begin only after the student has successfully completed the requirements for the study course units entitled Radiation Protection and Radiographic Exposures. Course requirements shall be completed one (1) year from date of enrollment; and

(3) Satisfactorily passed an examination [conducted or] approved by the cabinet.

Section 5. Temporary Certificate. The cabinet may, upon proper application and payment of the appropriate fee issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in radiography, nuclear medicine technology, radiation therapy [medical, osteopathic or chiropractic-radiography] and who meets the other requirements of these administrative regulations other than having taken the required examination. Temporary certificates shall be issued for one (1) year only and are not renewable.

Section 6. Practice Standards for General Radiation Operator. General Radiation Operators shall perform according to practice standards established by national organizations that include, but are not limited to, the following:

(1) Radiography standards. The radiographer shall effectively:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Apply knowledge of anatomy, positioning, and radiographic techniques to accurately demonstrate anatomical structures in medical imaging;

(c) Determine exposure factors to achieve optimum radiographic technique with a minimum of radiation exposures to the patient.

(2) Examine radiographs for the purpose of evaluating technique, positioning, and other pertinent technical qualities:

(a) Verifies the quality of radiographs by examination and judgment in the performance of medical imaging procedures;

(b) Provide patient care essential to radiologic procedures; and

(c) Recognize emergency patient conditions and initiate lifesaving first aid.

(2) Nuclear medicine technology standards. The nuclear medi-
cine technologist shall effectively:
(a) Apply knowledge of the principles of radiation protection for
the patient, self, and others;
(b) Apply knowledge of radio pharmacy, instrumentation, pa-
tient examination protocols to produce accurate metabolite and
image data;
(c) Provide patient care essential to nuclear medicine proce-
dures;
(d) Maintain patient records;
(e) Participate in the quality assurance program;
(f) Prepare, calibrate, identify, administer, and dispose of
radiopharmaceuticals;
(g) Exercise discretion and judgment in the performance of
medical imaging and therapeutic procedures; and
(h) Recognize emergency patient conditions and initiate life-
saving first aid.
(3) Radiation therapist standards. The radiation therapist shall
effectively:
(a) Apply knowledge of the principles of radiation protection for
the patient, self, and others;
(b) Demonstrate knowledge of human structure, function, and
pathology;
(c) Maintain the records of treatment administration;
(d) Deliver a planned course of radiation therapy;
(e) Produce and utilize immobilization and beam directional
devices;
(f) Prepare commonly used brachytherapy sources;
(g) Demonstrate knowledge of methods of calibration of equip-
ment, and quality assurance;
(h) Prepare isotope summations;
(i) Detect malfunctioning equipment;
(j) Apply wedge and compensating filters;
(k) Exercise discretion and judgment in the performance of
therapy procedures; and
(l) Recognize emergency patient conditions and initiate lifesav-
ing first aid.
(4) Radiologist assistant standards. The radiologist assistant, if
ordered to do so by the supervising radiologist, shall effectively:
(a) Perform selected procedures including static and dynamic
fluoroscopic procedures;
(b) Assess and apply the physiologic and psychological
responsiveness of patients undergoing radiologic procedures;
(c) Participate in patient management including acquisition of
additional imaging for completion of the examination and record
documentation in medical records;
(d) Evaluate image quality, make initial image observations,
and communicate observations to the supervising radiologist;
(e) Administer intravenous contrast media or other prescribed
medications; and
(f) Follow the established standards listed in 902 KAR 105-040.
Section 5(1)(a) through (6).
Section 6. Requirements for the Nuclear Medicine Technolo-
ist. (1) An individual holding a certificate as a nuclear medicine
technologist may:
(a) Conduct in-vivo and in-vitro measurements of radioactivity
and administer radiopharmaceuticals to human beings for diagnostic
and therapeutic purposes; and
(b) Administer x-radiation from a combination nuclear medi-
cine-computed tomography device if that radiation is administered
as an integral part of a nuclear medicine procedure that uses an
automated computed tomography protocol for the purposes of
attenuation correction and anatomical localization and the person
has received device-specific training on the combination device.
Section 7. Requirements for the Radiologist Assistant. (1) In
addition to the requirements of Section 5(1)(a) through (b) and (4)
(a) through (e) of this regulation, an individual holding a certificate
as a radiologist assistant shall comply with the following require-
ments:
(a) The individual is a certified general radiographer in this
state;
(b) The individual shall have satisfactorily completed an ad-
vanced academic program encompassing a nationally recognized
radiologist assistant curriculum culminating in a baccalaureate
degree, post baccalaureate certificate, or master's degree that
incorporates a radiologist-directed clinical preceptorship and meets
the eligibility requirements for certification by the American Registry
of Radiologic Technologists;
(c) The individual is certified in advanced cardiac life support
(ACLS);
(d) The radiologist assistant may not interpret images, make
diagnoses, or prescribe medications or therapies; and
(e) The radiologist assistant shall maintain values congruent
with the code of ethics of the American Registry of Radiologic
Technologists as well as adhere to national and institutional or
departmental standards, policies, and procedures regarding the
standard of care of patients.
(2) For the purposes of this section "direct supervision" means
the radiologist shall be present in the department/office suite and
immediately available to furnish assistance and direction through-
out the performance of the procedure. It does not mean that the
radiologist shall be present in the room where the procedure is
performed.

Section 8. Certification in Nuclear Medicine Technology or
Radiation Therapy. The cabinet may issue certification pursuant to
the following conditions:
(1) The applicant shall be currently employed full-time in the
position of a nuclear medicine technologist or radiation therapist
and have held the position for twenty-four (24) months prior to May
31, 2006; and
(2) The applicant shall satisfactorily demonstrate through em-
ployer documentation clinical experience in nuclear medicine technology
or radiation therapy. The employer and the licensed practitioner
shall be responsible for documentation of the required clinical ex-
pertise and supervision.

Section 9. Applications for certification in nuclear medicine
technology and radiation therapy shall be filed with the Cabinet for
Health and Family Services, Radiation Health Branch, 275 East
Main Street, Mailstop HS 1C-A, Frankfort, Kentucky 40621.
[Section 6.—Provisional—Certificate.—The cabinet may, under
emergency conditions only, issue a provisional certificate to an
applicant who works under the direct supervision of a medical,
osteopathic or chiropractic licensed practitioner provided:
(1) No certified operator is available;
(2) The licensed practitioner accepts full responsibility for the
applicant;
(3) The applicant has satisfactorily completed a four-year course
of study in a
secondary school or passed a standard equivalency test;
(4) The applicant and the licensed practitioner file a joint
statement detailing the training and experience of the applicant, if
any, and give an assurance that a minimum of thirty (30) clock
hours of training are forthcoming under the direct supervision of a
licensed—practitioner—or other qualified person, as defined in 902
KAR 105-040, Section 1(42).]

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall, if requested,
be held on December 21, 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 December 14, 2006,
five (5) working days prior to the hearing, of their intent to attend.
If no notification of intent to attend the hearing is received by that
date, the hearing may be canceled. The hearing is open to the public.
Any person who 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
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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 January 2, 2007. 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: Dewey F. Crawford
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for education and practice of persons other than practitioners who operate sources of radiation in the healing arts who perform medical radiography.
(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.570, 211.690 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts. This regulation is necessary to update standards for the certification of individuals who operate sources of radiation for human diagnostic radiologic and therapeutic purposes under the supervision of a registered radiologic technologist or radiologic technologist practitioner of the healing arts.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating to the certification of operators of sources of radiation is KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that the Cabinet for Health Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts who perform medical radiography.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The regulation assists in the effective administration of the statute by setting standards that operators are certified. These regulations have not been updated for over ten years and many changes in technology and radiology industry have occurred. The changes also bring Kentucky standards in compliance with federal standards.
(e) How the amendment conforms to the content of the authorizing statutes: See (1)(c)
(f) How the amendment will assist in the effective administration of the statute: The amendment will ensure the administration of the statute is done with the most current standards available and in compliance with federal standards.
(g) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 state health care organizations with approximately 400 individuals currently performing Medical Radiography.

(2) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must be familiar with the requirements for certification, and, if applying for such certification, meet the requirements of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of becoming familiar with these regulations should be negligible. The specific cost associated with complying with this regulation should also be negligible as the requirements are uniform across the industry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have all the information they need to be in compliance with cabinet regulations governing the radiation producing industry and eligible for certification. Additionally, they will have the benefit of working in an industry regulated to ensure highest degrees of safety to them and to the patients they serve.

(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation. This program is funded by agency receipts.
(b) On a continuing basis: There will be no additional costs associated with this administrative regulation. This program is funded by agency receipts.

(4) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Radiation Operator Certification Fees collected in accordance with 902 KAR 105:020.

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

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

(7) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any parts having to do with offering services where radiation producing equipment is used, e.g., city or county owned hospitals or clinics.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 211.570, 211.890 and 211.993.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated in the first year for state or local government by this regulation.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years for state or local government by this regulation.

(c) How much will it cost to administer this program for the first year? No additional costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(AMENDMENT)

902 KAR 105:070. Violations and enforcement.

RELATES TO: KRS 211 870
STATUTORY AUTHORITY: KRS 133.170, 194A.050(1)
[194A.050(4)], 211.090(3), 211.870, EO 96-862
NECESSITY, FUNCTION, AND CONFORMITY: Executive
Order 96-862, effective July 2, 1996 reorganizes the Cabinet for
Health and Family Services [Human Resources] and places the
Department for Public Health and its programs under the Cabinet
for Health and Family Services. KRS 211.870 and 211.993 authorize
[authorize] the Cabinet for Health and Family Services to promulgate administrative regulations relating to operators of
sources of radiation other than practitioners of the healing arts.
This administrative regulation establishes uniform enforcement procedures and penalties applicable to the certification of operators of
sources of radiation.

Section 1. Denial, Revocation and Suspension of Certificates.
The cabinet may deny, revoke or suspend the certificate of an
operator of a source of radiation who:

1. Has engaged in conduct relating to his profession of a
character likely to deceive, defraud or harm the public;

2. Has engaged in alcohol and other drug abuse as defined in
KRS 225.005(12);

3. Develops a physical or mental disability or other condition
that continued practice or performance of his duties may be dan-
gerous to patients or the public;

4. Performs procedures under, or represents as valid to any
person, either a certificate not issued by the cabinet or a certificate
containing unauthorized alterations or changes that are inconsis-
tent with cabinet records regarding the issuance of such certifi-
cation;

5. Has been convicted of a crime that is a felony under the
laws of this state or convicted of a felony in a federal court, unless
such individual has had all civil rights restored;

6. Exhibits significant or repeated failure in the performance of
professional duties or;

7. Fails to comply with any administrative regulation of the
cabinet relating to the certification of an operator of a source of
radiation.

Section 2. Hearings. (1) The cabinet shall furnish the certificate
holder with written notice of sufficient detail to reasonably apprise a
person of the nature, time and place of the offense charged.

(2) An operator to whom a notice or order is directed shall
comply immediately.

(3) An applicant for a hearing to the cabinet shall be granted a
hearing in accordance with 902 KAR 1:400.

Section 3. Penalties. (1) The cabinet shall assess civil penal-
ties in accordance with KRS 211.993 against an individual or cer-
tificate holder who fails to comply with this administrative regula-
tion, of not less than ten (10) dollars nor more than $100. Each day
of such violation or noncompliance shall constitute a separate of-
fense.

(2) Prior to assessing civil penalties, the cabinet shall confirm
the violation of the requirements by any of the following:

(a) Observation of the violation;

(b) Obtaining records, documents, or other physical evidence;

(c) Obtaining statements from either the employer or the em-
ployee which confirm the existence of the violation;

(d) Obtaining statements from third parties, e.g., patients or co-
workers, that corroborate the allegation that a violation has oc-
curred.

(3) Civil penalties shall be assessed against individuals who
perform diagnostic or therapeutic procedures without valid certifi-
cation as follows:

(a) Failure to apply for initial certification by an individual who is
fully qualified for certification at the time the violation is
discovered shall be assessed a civil penalty of no less than ten (10)
dollars per day until the application has been approved by the cabinet.

(b) Failure to apply for renewal by an individual who would be
eligible for renewal of certification but would not currently qualify
due to insufficient continuing education at the time the violation is
discovered shall be assessed a civil penalty of no less than twenty
(20) dollars per day until the application has been approved by the cabinet.

(c) Performance of a diagnostic or therapeutic procedure re-
quiring certification by an individual who is not qualified for certifica-
tion at the time the violation is discovered shall be assessed a civil
penalty of no less than $100 per day until the application has been
approved by the cabinet.

(4) Civil penalties shall also be assessed against the employer of
the individual without valid certification under 902 KAR 105:070,
Section 3(3)(a), (b), (c).

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
MIKE BURNESIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
cabinet hearing on this administrative regulation shall, if requested,
be held on December 21, 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 the agency in writing by December 14, 2006,
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. 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 regula-
tion. You may submit written comments regarding this proposed
Send written notification of intent to attend the public hearing or
written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street 5 W-8, Frankfort, Kentucky 40601, phone (502)
564-7905, fax (502) 564-7737.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dewey F. Crawford 564-3700, ext. 3695

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-
tive regulation establishes uniform enforcement procedures and
penalties applicable to the certification of operators of sources of
radiation.

(b) The necessity of this administrative regulation: The Cabinet
for Health and Family Services is authorized by KRS 211.870 and
211.993 to regulate operators of sources of radiation other than
licensed practitioners of the healing arts including, the issuance,
renewal, and revocation of certificates and to enforce the statute.
The purpose of this administrative regulation is to update the con-
ditions under which an operator will find themselves in violation of
the statute and to set forth the penalties for both the employee and
employer for failure to comply with the statutes and regulations.

(c) How this administrative regulation conforms to the content of
the enacting statutory authority: The statutory authority for the promul-
gation of an administrative regulation relating operators of sources is
KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that
the Cabinet for Health Services shall regulate operators of sources of
radiation other than licensed practitioners of the healing arts.

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(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The benefit of this regulation is that it sets forth the conditions under which a regulated entity would be in noncompliance with the regulation and sets forth the penalty for such noncompliance. This benefits the cabinet in that it permits the effective enforcement of the statute.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates 902 KAR 105.070, and adds a section on penalties.

(b) The necessity of the amendment to this administrative regulation: It has been over 10 years since these regulations have been updated and there have been many significant advancements in the radiation producing industry. This regulation and those in this chapter are being updated to reflect these changes and to conform to national.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c)

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the cabinet to conform to national standards and to operate a regulated entity with standards that reflect the industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 health care organizations with approximately 400 individuals currently performing nuclear medicine procedures or radiation therapy treatments in Kentucky will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must be familiar with new penalties levied for noncompliance with the regulations of operator certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The cost of becoming familiar with these regulations should be negligible. The cost is the time spent reading the new regulation for compliance and penalty stipulations. The specific cost associated with this regulation amendment will be the penalties assessed for noncompliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those entities will benefit by knowing exactly what standards of compliance are required and what penalties would be levied for noncompliance. The regulated entities will have all the information they need to be in compliance with regulations governing the radiation producing industry. Additionally, they will have the benefit of working in an industry regulated to ensure highest degrees of safety to them and to the patients they serve.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation. The program is supported by agency receipts.

(b) On a continuing basis: No additional cost will be incurred as a result of amending this administrative regulation. The program is supported by agency receipts.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Radiation operator certification fees collected in accordance with 902 KAR 105:020.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended regulation does not establish any 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 individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any party having to do with healing arts where radiation producing equipment is used, e.g., city or county owned hospitals or clinics.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.870, 211.890, and 211.993.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue in the first full year. This regulation sets forth the amount of those fines. However, compliance is expected and the program is not supported by fines.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue in subsequent years. Fines can be levied for noncompliance and this regulation sets forth the amount of those fines. However, compliance is expected and the program is not supported by fines.

(c) How much will it cost to administer this program for the first year? The amended regulation will not require additional costs for the first year.

(d) How much will it cost to administer this program for subsequent years? The amended regulation will not require additional costs for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division for Mental Retardation
(Amendment)

908 KAR 2:190. Hart-supported living services.

RELATES TO: KRS 210.770-210.795
STATUTORY AUTHORITY: KRS 210.790(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.790(5) authorizes the State Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. This administrative regulation establishes the duties of the supported living council, the procedure for obtaining Hart-supported living grants, the standards to monitor the quality of service delivery [services], and the appellate procedure [for an appeal denial].

Section 1. Definitions. (1) "Adaptive and therapeutic equipment" means an item recommended by a physician, or therapist which promotes the recipient's independent functioning and communication.

(2) "Applicant" means a person who is eligible for Hart-supported living funds and submits a completed application to the
regional supported living coordinator employed by the mental health and mental retardation board located in the region where the applicant chooses to reside [residence] by the deadline established in the application.

(3) "Application" means a written request for supported living services which must be completed and submitted in accordance with Section 3 (4) of this administrative regulation to the regional Hart-supported living coordinator.

(4) "Community resource developer" means a person who coordinates and assists a recipient to develop friendships, opportunities, networks, in the community on an individualized basis.

(5) "Council" means State Supported Living Council as stated at KRS 210.770(7) and 210.775.

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

(7) "Duplicative service" is a support or service received through the Hart-Supported Living Program which an individual is entitled to receive from another agency or program.

(8) "Eligibility for services" means as stated at KRS 210.790(1).

(9) "Hart-supported living" is defined by KRS 210.770(6) and (6).

(10) "Hart-supported living grant" means an award of funds for a fiscal year to an applicant.

(11) "Home modifications" means an architectural change, ramp, widening of doors, or other adaptation [adaptation] which need to be made to the recipient's place of residence to accommodate improved patient's/recipient's disability.

(12) "Homemaker services" means cooking, cleaning, shopping, laundry, housekeeping, and practical assistance in maintaining the recipient's [recipient] household.

(13) "Impairment" means as stated at KRS 210.770(1) and (3).

(14) "One-time support" means a nonrenewable grant for start-up costs, home modifications, assistive technology, or other support awarded for no longer than one fiscal year.

(15) "Ongoing support" means a renewable grant for supports or services which will likely be required on a continual basis.

(16) "Nominating organization" means one (1) of the organizations specified in KRS 210.775.

(17) "Personal care services" means assistance with feeding, bathing, dressing, transferring, turning, repositioning, activities of daily living, and if necessary, ambulation and emergency procedures.

(18) "Recipient" means a person who has applied and been approved for a supported living grant [funds] by a Regional Supported Living Council.

(19) "Regional supported living coordinator" means a person who is responsible for fiscal and programmatic oversight of supported living funds and plans.

(20) "Regional Supported Living Council" means as stated at KRS 210.770(9) and 210.785.

(21) "Request for reconsideration" means the process to be followed if a recipient disagrees with a decision made by the regional supported living coordinator, review team, or council [regarding request for a supported living plan amendment]

(22) "Review team" means a team designated by the Department and Council to review applications, make funding recommendations, and review requests for amendments from recipients.

(23) "Start-up grants" means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture, home furnishings, or equipment.

(24) "State Supported Living Council" means as stated at KRS 210.770(7) and 210.775.

(25) "Substantive limitation of a major life activity" means as stated at KRS 210.770(4).

(26) "Supported living" means as stated at KRS 210.770(4) and (9).

(27) "Supported living community resource developer" means a person who coordinates and assists a recipient to develop friendships, opportunities, networks, in the community on an individualized basis.

(28) "Supported living grant" means an award of funds other than start-up grants by a Regional Supported Living Council to an applicant.

(29) "Supported living plan" means the document developed between the regional Hart-supported living coordinator and the recipient to account for the services to be provided and funds awarded as a Hart-supported living grant.

(30) "Supported living plan amendment" means a written, documented change in a supported living plan in the same fiscal year.

(31) "Transportation" means a service or mileage reimbursement for a person or provider who transports the recipient to work or community activities.

Section 2. State Supported Living Council Operating Procedures. (1) A State Supported Living Council member shall:

(a) Adhere to applicable laws and regulations concerning confidentiality;

(b) Disclose any relationship to any person receiving Hart-supported living services, including themselves; and

(c) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the chair of the State Supported Living Council shall recommend the dismissal of that member to the governor.

(6) Adhere to applicable laws and regulations concerning confidentiality.

(2) A State Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional;
3. Financial;

(b) Be physically present in a meeting or portion of a meeting in which a conflict of interest exists [the matter is discussed or voted on];

(c) Assist another individual, regardless of where the person resides, to complete an application for supported living services, except as provided in subsection (3) of this section.

(3) A State Supported Living Council member may assist in the completion of an application for Hart-supported living services for himself, if eligible, or an eligible family member.

Section 3. (Regional-Supported Living Council Operating Procedures)

(1) A Regional Supported Living Council member shall:

(a) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the Chair of the Regional-Supported Living Council shall recommend the dismissal of that member to the State Supported Living Council;

(b) Adhere to applicable laws and regulations concerning confidentiality;

(c) Comply with the evaluation criteria as established by the State Supported Living Council and the Department for Mental Health and Mental Retardation Services for a given fiscal year; and

(d) Accord every recipient and applicant the same opportunity for personal interaction with the council.

(2) A Regional Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional;
3. Financial;

(b) Be physically present in a meeting in which the matter is discussed or voted on;

(c) Assist another individual, regardless of where the person resides, complete an application for supported living services, except as provided in subsection (3) of this section.

(3) A Regional Supported Living Council member may assist in the completion of an application for supported living services for himself, if eligible, or an eligible family member.

Section 4. Applicant Responsibilities. (1) The applicant shall submit a completed application to the regional Hart-supported living coordinator where the applicant chooses [resides] to reside. The application shall be submitted [specify]:

(a) On the current Hart-supported living application with all
required sections completed: and
(b) By the annual deadline.
   (a) Name;
   (b) Address;
   (c) Telephone number;
   (d) Social Security number;
   (e) Disability;
   (f) Type of service or support requested;
   (g) Proposed budget;
   (2) A Hart-supported living grant shall not be funded (used) for:
   (a) On-going rent or mortgage payments;
   (b) Payment of a medical insurance premium or unpaid medical bill;
   (c) Supplementation of wages for staff in other publicly-funded programs;
   (d) Modifications costing over $3,500 ($2,500) to rental property;
   (e) A home improvement not related to a person's disability;
   (f) Rental of a vehicle for more than thirty (30) days in a fiscal year;
   (g) Purchase of a vehicle;
   (h) Supports or services for individuals in living arrangements that include more than three (3) people who are eligible for Hart-supported living unless all are related legally or biologically as a family unit;
   (i) Equipment or service which is obtainable from another program for which the applicant qualifies;
   (j) Tuition, transportation costs, or fees for a program or activity lasting more than thirty (30) days if during that fiscal year a majority of participants are Individuals with disabilities as defined by the Americans with Disabilities Act (ADA) of 1990; eligible to apply for supported living;
   (k) Support or service which is duplicative of a support or service which is obtainable from another program for which the individual qualifies;
   (l) Furniture or home furnishings not related to a Start-up Grant or a person's disability.

Section 4. Eligibility. (1) An applicant shall have a disability; and
   (a) Be a resident of Kentucky;
   (b) Have a family or a guardian who is a resident of Kentucky;
   (c) If funded, will become a resident of Kentucky.
   (2) An applicant may be living:
   (a) Independently;
   (b) With a family member;
   (c) In a congregate setting, with a plan to live in the community if funding is received.

Section 5. Application Evaluation Criteria. (1) The following criteria shall be used by the review team (Regional Supported Living Council) to recommend funding or award a Hart-supported living grant:
   (1) Eligibility:
   (a) An applicant shall be disabled and:
      1. Be a resident of Kentucky;
      2. Have family or a guardian who is a resident of Kentucky;
   (b) An applicant may be living:
      1. With a family member;
      2. Independently;
   (2) Adherence to principles of the Hart-supported living program (shall be weighed at thirty percent of the total score in the decision to award a grant). The following shall be taken into consideration:
      (a) Whether the services have been designed around the specific needs of the individual;
      (b) Whether the ability of the applicant (person will be able) to exercise (exercised) choice and autonomy in the supported living arrangement;
      (c) The involvement of (of) the name by which the housing arrangement will be made;
      (d) Whether there will be people, in addition to the applicant [individual] and paid staff, who are committed to supporting the arrangement [over-time]; and
      (e) Opportunities for the applicant to be present and participate in family and community activities, (f) Whether the quality of life for the person with a disability will be improved, if the grant is funded.
   (3) Potential for success (shall be weighed at twenty-four percent of the total score in the decision to award a grant). The following shall be taken into consideration:
      (a) Whether the applicant has clearly indicated the reason for requesting funds and what he will do if granted the funds;
      (b) Whether the applicant has identified a place to live; and
      (c) Whether there are Additional resources available to the applicant have been identified that may include [person, including):
         1. Family;
         2. [A] Friend; or
         3. Another service provider who can support the situation.
   (d) The application indicates that the applicant is planning for his future.
   (3) [4] Need (shall be weighed at eighteen percent of the total score in the decision to award a grant). The following shall be taken into consideration:
      (a) Services have been designated around the specific needs of the applicant (whether the application shows that the person is planning ahead for his future);
      (b) Whether the applicant's family is experiencing a crisis situation, and
      (c) Whether the applicant's multiple disabilities create barriers to developing and sustaining supports.
   (4) [5] Accountability (shall be weighed at twelve percent of the total score in the decision to award a grant). The following shall be taken into consideration:
      (a) Whether the applicant has identified a prospective (viable) service provider;
      (b) Whether the capability of the applicant, and the people supporting the applicant, to manage [applicant's family's capable of managing] the resources and arrange [arranging] for the requested services; and
      (c) Whether the applicant has demonstrated a reasonable effort to secure funds from other sources, if appropriate; and
      (d) Whether the request is reasonable.
   (5) [6] Overall purpose (quality) of the application (shall be weighed at ten percent of the total score in the decision to award a grant). The following shall be taken into consideration:
      (e) Whether the supported living resources will be used to promote and improve a positive quality of life for the applicant [disability person] and
      (f) Whether the supported living resources will simply maintain the isolation and dependency of the person and his family.

Section 6. Funding Recommendations. (1) A review team shall:
   (a) Evaluate applications in accordance with the criteria in Section 5 of this administrative regulation;
   (b) Make funding recommendations for each fiscal year, not to exceed regional allocations; and
   (c) Review requests for plan amendments.
   (2) Funding recommendations shall be made in the following order:
      (a) Current recipients requesting the same amount or less for on-going support;
      (b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:
         1. An increase in the pay rate of a provider for services currently in the plan;
         2. An increase in employer taxes for services currently in the plan;
         3. An increase in worker's compensation rates; or
         4. Payment to a provider to compute required employer taxes and withholdings;
      (c) Applicants denied funding from the previous fiscal year and approved for funding by the recommissioning or administrative hearing process as outlined in Sections 11 and 12 of this administrative regulation; and

- 1739 -
(d) New applicants and current recipients requesting additions to their plans.

(3) A review team shall not include:
(a) The regional coordinator representing an applicant, or
(b) An employee of a supported living contracted agency for the applicant's choice of residence.

Section 7. [6:] Recipient Responsibilities. (1) A recipient of a supported living grant shall:
(a) Participate in the development of a supported living plan [in coordination] with the Hart-supported living coordinator.
(b) Adhere to the supported living plan and request a plan amendment for a desired change, and;
(c) Negotiate the services to be provided by:
1. A service providing agency;
2. An individual who provides services, as an employee or independent contractor.

(2) A recipient of a Hart-supported living grant who is an employer shall:
(a) Be responsible for the computation, payment, and reporting of [required] employee payroll, withholding, workers' compensation, unemployment [and actual payment of required withholdings], and [and] taxes, [and] disbursements appropriate to being an employer.
(b) Establish terms of employment for an employee, to include time, duties and responsibilities. This shall be in the form of a signed agreement [between the recipient and the employee].
(c) Establish terms for an independent contractor to include services to be provided and compensation. This shall be in the form of a signed agreement [between the recipient and the independent contractor].

(3) A recipient of a Hart-supported living grant shall not sell or donate equipment or another item purchased with supported living funds without the written consent of the council.
(a) A recipient of a Hart-supported living grant shall comply with standards as set forth in KRS 210.795.
(b) A recipient shall immediately notify the regional coordinator upon the receipt of additional supports or services.
(c) A recipient shall be responsible for submitting documentation that a support or service, approved on a plan, has been provided when requesting payment.

(7) A recipient of an ongoing grant shall submit a request for continued or increased funding by April 1 for funding for the fiscal year beginning July 1.

Section 8. Reduction of a Hart-supported Living Grant. (1) The grant shall be reduced by any amount received for a service which duplicates a support or service on the supported living plan.
(2) The grant shall be reduced if:
(a) The support does not comply with the principles and definition of the Hart-supported living program in KRS 210.770(5) and (6) and 210.795; or
(b) The recipient no longer needs a support or service in whole or in part.
(c) The recipient no longer needs a support or service without written consent of the regional coordinator.
(d) Comply with standards as set forth in KRS 210.795.

Section 9. [7:] Termination of a Hart-supported Living Grant. A Hart-supported living grant shall be terminated if the recipient:
(1) Does not use the funds in accordance with the principles and definition of supported living in KRS 210.770, 210.795, and this administrative regulation; or
(2) Does not comply with employer responsibilities if applicable; or
(3) Takes up residence outside of Kentucky; or
(4) Requests termination of the Hart-supported living grant; or
(5) Dies.

Section 8. Reconsideration Process for Supported Living Plan or Plan Amendments. (1) A recipient who disagrees with a decision by the regional supported living coordinator or Regional Supported Living Council regarding a supported living plan or plan amendment may request reconsideration, in writing, or alternative format within thirty (30) days following the notification by the regional supported living coordinator or Regional Supported Living Council's decision.
(2) A request for reconsideration shall:
(a) Be submitted to the regional supported living coordinator or Regional Supported Living Council; and
(b) Contain the following information:
1. Name;
2. Address;
3. Telephone number;
4. A decision to be reconsidered;
5. A reason for the decision to be reconsidered;
6. Documentation supporting request for reconsideration;
7. Signature of person requesting reconsideration.
(3) The request for reconsideration, and supporting documentation, shall be reviewed by the Regional Supported Living Council. The council shall issue a written or alternative format response to the recipient no later than seven (7) working days after a decision has been made.
(4) The recipient may request a reconsideration by the State Supported Living Council if the Regional Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.
(a) A request for reconsideration shall:
1. Be submitted to the regional supported living coordinator for review by the State Supported Living Council; and
2. Contain the same information required in subsection (2)(b)
off the contract.
(b) The request for reconsideration and supporting documentation shall be reviewed by the State Supported Living Council.
(c) The reconsideration shall include:
1. Three (3) members of the State Supported Living Council, one (1) of whom shall be the chairman or their designee;
2. The recipient or his designee;
3. Two (2) members of the Regional Supported Living Council, one (1) of whom shall be the chairman or their designee.
(d) The State Supported Living Council shall issue a written response to the recipient and the Regional Supported Living Council shall be notified of the decision and an explanation for the decision within thirty (30) days.
(5) If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.

Section 10. [9:] Nonfunded Supported Living Applications. (1) Applications that will exceed the regional allocation of supported living funds shall not be approved unless funding for that application becomes available within the fiscal year for which the application was made.
(2) The council may recommend funding for an application when it is determined through the reconsideration process that the review team did not comply with Sections 5 and 6 of this administrative regulation.

Section 11. Reconsideration Process. (1) A recipient or applicant who disagrees with a decision by the regional Hart-supported living coordinator or review team may request reconsideration in writing or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the decision. Reconsideration may be requested regarding:
(a) A supported living plan;
(b) A plan amendment;
(c) The reduction of a grant;
(d) The termination of a grant; or
(e) A nonfunded application.
(2) A request for reconsideration shall:
(a) Be submitted to the regional Hart-supported living coordinator for review by the council; and
(b) Contain the following information:
1. Name;
2. Address;
3. Telephone number;
4. A decision to be reconsidered;
5. A reason for a decision to be reconsidered;
6. Documentation supporting request for reconsideration; and
7. Signature of person requesting reconsideration.
(3) A meeting for reconsideration shall be scheduled and includes:
(a) Three (3) members of the council, one (1) of whom shall be the chairperson or his designee;
(b) The recipient or his designee;
(c) One (1) member of the review team; and
(d) The regional Hart-supported living coordinator.
(4) The meeting for reconsideration shall be conducted at a time and place convenient to the parties and may be conducted in person, by videoconference, or by telephone conference.
(5) The chair shall make the final decision and issue a written response to the recipient with an explanation for the decision within thirty (30) days.
(6) If a recipient or applicant disagrees with the determination made by the council, the recipient may request an administrative hearing.
(7) No currently funded recipient shall have his grant reduced or terminated to fund a plan or grant approved through the reconsideration process. A person applying for supported living services who has not been funded may appeal the decision based upon the Regional Supported Living Council failing to comply with Section 2(I)(o) through (g) of this administrative regulation.
(8) An administrative hearing shall be requested no later than thirty (30) days after notification that the application was not funded.

Section 12. [44] Request for Administrative Hearing. (1) An applicant or recipient who disagrees with the reconsideration decision [as follows] may request an administrative hearing within thirty (30) days of receipt of notification:
(a) A recipient or service who disagrees with the determination for reconsideration made by the State-Supported Living Council; and
(b) A person who did not receive funding based on the criteria in Section 8 of the administrative regulation.
(2) The applicant or recipient requesting an administrative hearing [recipient of supported living services or a person who application was not funded] shall:
(a) Submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, [4E-E:] Frankfort, Kentucky 40621; and
(b) Include with the request the same information required in Section 11P(2)(b) of this administrative regulation.
(3) The administrative hearing process shall be in accordance with KRS Chapter 138.

Section 13. [44] Regional Hart-supported Living Coordinator Responsibilities. The regional Hart-supported living coordinator shall:
1. Participate as required, in review team responsibilities as outlined in Section 8(1) of this administrative regulation; [Provide support to the regional council, including:
(a) Making meeting arrangements;
(b) Sending notices and agendas to members;
(c) Providing budgetary information to members for funding decisions;
(d) Arranging member expense reimbursement; and
(e) Maintaining:
1. A financial account of expenditures; and
2. Minutes from the meetings.]
2. Disseminate applications for the Hart-supported Living Program which include the evaluation criteria [by which the applications shall be reviewed.]
3. Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant's behalf. [black]
4. Receive supported living applications, document date received, send notice of receipt of application; [and maintain a database of funded applicants.]
5. Pre-screen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);
6. Maintain a database of expenditures and activities of unfunded applicants and funded recipients for each fiscal year. Criteria for the database information shall be established by the council and the department, [to include:] (a) Name;
(b) Address;
(c) Phone number;
(d) County;
(e) Services requested; and
(f) Amount of funding requested.
6. Pre-screen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);
7. Notify all applicants of the status of their applications within fifteen (15) days of the completion of the initial funding recommendations, but no later than June 15 of each fiscal year;
8. Upon recommendation for funding [by the regional council], meet with the recipient to finalize a supported living plan within thirty (30) days of the recommendation [for funding]. Initial plans shall follow the funding recommendations and be specific to approved supports and services;
9. Educate the recipient on their responsibilities as outlined in Section 7 of this administrative regulation;
10. Arrive for payments for current funding; [as follows]
11. Maintain supported living plans that includes [which are currently-funded, including:
(a) Receiving and paying the recipient for services provided to the recipient;
(b) Verifying the service as a part of the established [checking against the plan];
(c) Approving [fee] payment; and
(d) Keeping a record of payment.
11(44) Arrive for payments for current funding; [as follows]
12. Monitor to ensure compliance with regulations and the successful implementation of plans. Monitoring shall be by home visit or site visit where the services are received with home modifications requiring a home visit. Monitoring reports shall be completed for each recipient as follows:
(a) One (1) time services received by a recipient within three (3) months of completion of the service;
(b) One (1) time services received by a recipient within the first three (3) months of the initiation of the supported living plan and annually thereafter;
(c) Reports of monitoring visits shall be documented in a manner and format approved by the council and
(d) Monitoring reports shall be a permanent and part of the recipient's record.
13. Conduct quarterly visits and follow-up either by visit or telephone, within ninety (90) days, to determine if the recipient delivered the service or equipment received.
14. Attend trainings and meetings as required by the council and
14(11) for regional supported living coordinators.
15. Submit database information as outlined in this section (quarterly reports) to the Division of Mental Retardation Services [regarding expenditures and activities].
16. Contact the appropriate nominating agency as governed by KRS 210.775(2)(b) and 210.785 to notify it of the need for a nominee to replace an individual on the Regional Supported Living Council.

Section 14. [12] Contract Agency Responsibilities. The contract agency for supported living funds shall:
1. Implement the Hart-supported living program in accordance with KRS 210.770, 210.780, and 210.795
2. Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary [administrative support] personnel within the contract agency office.

(4) Provide liability insurance for the Regional-Supported Living Council.

(5) Establish a cost center and record staff costs for administering the Hart-supported Living Program [working with the regional council, applicants, applicants, recipients, and administrative duties].

(6) Establish a budget with the Regional-Supported Living Council for council expenses on a fiscal year basis.

(7) Maintain files and records that include, but are not limited to:

(a) Applications,

(b) Requests for continued funding,

(c) Applicants that were not funded for seven (7) years after the fiscal year in which application was not funded,

(d) Recipients having funding terminated for seven (7) years or more.

(e) Currently-funded recipients,

(f) Recipient plans.

(g) Amendments to plans,

(h) Financial records,

(i) Quarterly reports

Section 15. [H.3] Department for [Mental Health and Mental Retardation Services] Responsibilities. The Department for Mental Health and Mental Retardation Services shall:

(1) In cooperation with the [State-Supported Living] council, establish deadlines, budgets, and priorities for supported living funds.

(2) Maintain aggregate financial and programmatic data.

(3) Advocate for program expansion.

(4) Provide staff support, technical assistance, and training for the Hart-supported Living Program.

(5) Provide monitoring of the Hart-supported Living Program.

(6) Regularly inform the nominating organizations per KRS 210.775(2)(h) and 210.775(6) of their responsibility to select nominations for both the State and Regional-Supported Living Councils.

Section 14. Nominating Organizations' Responsibilities. Nominating organizations shall:

(1) Solicit nominations of qualified nominees per their designated capacity to serve on both the State and Regional-Supported Living Councils in accordance with KRS 210.775.

(2) Submit the biography form to the Director, Division of Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, [4E-F], Frankfort, Kentucky 40621.

Section 16. [H.6] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Hart-Supported Living Grant Application", July 2006 edition.


(2) This material [it] may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, Division of Mental Retardation Services, 100 Fair Oaks Lane, [4E-F], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

JOHN M. BURT, Ed D, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: October 9, 2006

FILED WITH LRC: October 17, 2006 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 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 December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 the proposed administrative regulation, which will be considered before final rule adoption.

(a) What this administrative regulation does: This administrative regulation defines the process for application, funding recommendations, and monitoring of the State Supported Living Program.

(b) The necessity of this administrative regulation: The necessity is to carry out the purposes of KRS 210.770 to 210.795.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Administrative regulations define the eligibility and application process for State Supported Living Grants. Further, this regulation defines the responsibilities and duties transcribed by KRS 210.775.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is addressed in the responses provided in (1a)-(c).

(2) If 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 Regional Planning Council was dissolved by statute during the 2006 legislative session.

(b) The necessity of the amendment to this administrative regulation. The necessity is to comply with the statutory changes to the State Supported Living Program during the 2006 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: Administrative regulations define the process for application, funding recommendations, and monitoring of the State Supported Living Program.

(d) How the amendment will assist in the effective administration of the statutes: This is addressed in the responses provided in 2(a)-(c).

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

1. Individuals with disabilities as defined by the Americans with Disabilities Act, as they would be eligible to apply for the grants outlined in this administrative regulation.

2. Service providers and coordinators to provide their responsibilities and accountability. Service providers shall include the 14 community mental health/mental retardation boards.

3. The Department for Mental Health and Mental Retardation Services outlining the duties and responsibilities of oversight for the program and funds.


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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An extra step, in accessing grants for eligible citizens, has been eliminated by statute by the dissolution of the Regional Supported Living Councils.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost incurred for the entities identified in question (3) for the amendments to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The citizens are eligible for services may apply for grants to receive funding for services or items...
to assist them in remaining in their homes in the community.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds allocating during the 2006 legislative session.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Nonapplicable to this program.

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

(9) TIERING: Is tiering applied? No tiering is applied to this administrative regulation. Eligible applicants and recipients are equally regulated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is none applicable to this regulation.

2. State compliance standards. KRS 210.770 to 795

3. Minimum or uniform standards contained in the federal mandate. This is not applicable to this regulation.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not applicable to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact:

(a) Service providers and coordinators and their responsibilities and accountability. Service providers shall include the fourteen (14) Community Mental Health/Mental Retardation Boards.

(b) The Department of Mental Health and Mental Retardation Services; and

(c) State Supported Living Council.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.770 to 795 authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not generate any revenue to the State government. State general funds are allocated in the biennial budget specifically for this program.

5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any revenue for the first year.

6. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any revenue for subsequent years.

7. How much will it cost to administer this program for the first year? State general funds, in the amount of $6,195,500, have been budgeted for the Fiscal Year 2007. It is anticipated that it will cost $6,195,500 to administer this program in the first year of the biennium.

8. How much will it cost to administer this program for subsequent years? State general funds, in the amount of $7,195,500, have been budgeted for the Fiscal Year 2008. It is anticipated that it will cost $7,195,500 to administer this program in the first year of the biennium.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
Office of the Ombudsman

(AMENDMENT)


RELATES TO: 45 C.F.R. 46.101-46.409, 164.512(f)
NECESSITY, FUNCTION, AND CONFORMITY: The cabinet is required, by 45 C.F.R. 46.101(a)(2), to have an Institutional Review Board for the Protection of Human Subjects to protect the rights and welfare of human subjects involved in research. This administrative regulation: (1) incorporates by reference applicable publications that establish the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation requirements, and ethical principles and guidelines; and (2) covers specific requirements for protecting human subjects involved in research.

Section 1. Definitions. (1) "Board" or "IRB" means the cabinet's Institutional Review Board required by Section 2 of this administrative regulation.

(2) "Cabinet" means the Cabinet for Health and Family Services. [Health-nak project means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of human research subjects.]

(3) "Principal investigator" means the investigator involved in the research project that has responsibility for making decisions regarding the research study.

(4) "Research" is defined in 45 C.F.R. 46.102(d).

Section 2. Institutional Review Board. (1) An IRB for the Protection of Human Subjects shall be created within the cabinet.

(2) The board shall:

(a) Consist of not less than five (5) nor more than eleven (11) members appointed by the secretary;

(b) Include members from various professional and academic fields including consideration of race, gender, and cultural backgrounds in accordance with 45 C.F.R. 46.107(a);

(c) Include, in accordance with 45 C.F.R. 46.107(c), at least one (1) member each representing the following areas:

1. Scientific and non-scientific;

2. A non-voting representative of the general public;

3. A non-voting representative of the protected population;

4. An institutional official with primary responsibility for the conduct of human research; and

5. An individual with training in the human research protections program;

6. Include at least one (1) member who shall be: (a) Designated by the secretary to serve as a chair; and

(d) (as) Meet as needed to review a project.

(3) The secretary shall appoint an IRB administrator, within a cabinet department or office, who shall:

(a) Serve as liaison between the board and the U.S. Department of Health and Human Services;

(b) Maintain records in accordance with 45 C.F.R. 46.115;

(c) Conduct a preliminary review of a submitted project; and

(d) Determine if a project requires board review in accordance...
Section 6. Responsibilities of Principal Investigators. (1) If a change is made in research design or protocol that affects the level of risk to a subject, confidentiality procedures, or consent procedures, the principal investigator shall submit the change, before implementation, to the board for approval.

(2) The principal investigator shall report to the board:
(a) An unanticipated problem involving a risk to a subject or another individual, as a result of research activity, within ten (10) working days;
(b) A research subject death within seven (7) days of the principal investigator's knowledge of a death; and
(c) Whether the death appears likely to be related to participation in the research project.

(3) The principal investigator shall submit to the board:
(a) A copy of final research findings and conclusions; and
(b) An annual report and request for reapproval for a research study that extends beyond one (1) year.

Section 7. Confidentiality. (1) Research information that identifies an individual subject shall be regarded as confidential in accordance with KRS 193A.080(1) [194B.090(1)], 45 C.F.R. 46.111(a)(7), and 45 C.F.R. 46.112(a) and shall not be disclosed to any person outside the research project staff or published without the subject's prior written authorization.

(2) Raw or summary data may be released if the data does not identify a subject.

Section 8. References. The decision of the board concerning the protection of a human subject shall be in accordance with:
(1) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, edition April 18, 1979"; and
(2) 45 C.F.R. 46.101 through 45 C.F.R. 46.409 and 45 C.F.R. 46.112.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, edition April 18, 1979"; and
(b) Request for Research Activity Approval, Institutional Review Board for the Protection of Human Subjects (IRB), Kentucky Cabinet for Health and Family Services, edition 1/07 [edison 11/03].

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

SANDRA BROCK, Ombudsman
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 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 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 January 3, 2007. 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, KY 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Extridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference applicable publications that establish the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation requirements, and ethical principles and guidelines; and covers specific requirements for protecting human subjects involved in research.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the cabinet is required, by 45 C.F.R. 46.101(a), to have an Institutional Review Board (IRB) to protect the rights and welfare of human subjects involved in research.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes an IRB within the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of 45 C.F.R. 46.101(a), by establishing duties and responsibilities of the IRB and the cabinet’s IRB administrator for protecting human subjects involved in research.

(2) If 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 requirements for membership and duties of the board, clarify responsibilities of the cabinet’s IRB administrator pursuant to federal statutes, and provide invitation of an individual with competence in special areas for assistance to the IRB in review of a research project.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify that protection of human subjects in research are being implemented by the cabinet’s IRB.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to protection of the rights and welfare of human subjects by clarifying the responsibilities of the IRB with review of and approval of any human research project.

(d) How the amendment will assist in the effective administration of the statutes: The amendments further clarify the duties and responsibilities of the cabinet’s IRB to ensure that human subjects are protected when involved in a research project.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include educational Institutions (primarily colleges and universities), individual researchers, government agencies, and other organizations that conduct research involving human subjects that requires the approval of the cabinet’s IRB in accordance with 45 C.F.R. 46.101 — 46.409. It is not known at this time how many entities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will ensure that the rights and welfare of human subjects involved in research are protected. It will also clarify, for those conducting research subject to 45 C.F.R. 46.101 — 46.409, the role and responsibilities of the cabinet’s IRB.

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

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

(b) On a continuing basis: There will be no additional cost on a continuing basis associated with the implementation of this amended regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No expenditure identified specifically for the IRB; it is contained within the normal, general operating expenditures associated with the Ombudsman’s Office.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. Policy is implemented the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All departments and offices of the Cabinet for Health and Family Services but primarily the Office of the Ombudsman.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 46.101(a), KRS 194A.050(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no revenue generated for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet’s IRB has been in existence since 1986. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs to operate the cabinet’s IRB in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Family Support  
(Amendment)  

921 KAR 2:510. Relocation Assistance Program.  

RELATES TO: KRS 45.237-241, 194.030(8), 205.211, 42  
U.S.C. 601-619  

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS  
194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulation necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. KRS 205.200(2) requires the secretary to prescribe, by administrative regulation, conditions of eligibility for public assistance, in conformity with federal law. This administrative regulation establishes eligibility requirements for the Relocation Assistance Program.  

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2.006.  
(2) "Family Alternative Diversion Program" or "FAD" means the program established in 921 KAR 2.500.  
(3) "Kentucky Transitional Assistance Program" or "K-TAP", Kentucky's Temporary Assistance for Needy Families or "TANF" Program, means a money payment program for children who are dependent on parental support or care in accordance with 921 KAR 2 006.  

Section 2. Relocation Assistance Program. (1) An applicant for the Relocation Assistance Program shall:  
(a) Be a current recipient of K-TAP;  
(b) Have a verified offer of employment with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate; or  
2. Be currently employed with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate, reporting and verifying timely, and request relocation assistance within ninety (90) days from the start date of employment; and  
(c) Be in need of assistance to relocate in order to:  
1. Accept or maintain a (the) verified offer of employment if the applicant's:  
(a) Current residence is located ten (10) miles or more from the location of new employment, and  
(b) New residence is closer to the location of new employment than the applicant's current residence; or  
2. Escape a domestic violence situation, as determined by the cabinet;  
(d) Not be required to comply with paragraphs (b) and (c) of this subsection, if moving to escape from a domestic violence situation; and  
(e) Complete Form "RA-1, Application for Relocation Assistance".  
(2) To the extent funds are available, the payment shall be issued to assist an eligible K-TAP recipient in meeting moving-related expenses. Moving-related expenses shall include:  
(a) Moving van rental;  
(b) First month's rent for apartment or house; and  
(c) Security deposit, utility hook-up fee, or other moving-related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.  
(3) The amount of payment shall be up to $500 based on the actual verified moving-related expenses, as listed in subsection (2) of this section.  
(4) Except for a domestic violence situation, an otherwise eligible recipient of the Relocation Assistance Program shall receive relocation assistance only once (1) time.  
(5) The offer of employment, including hourly wage and number of hours, and the availability of a new residence, as specified in subsection (1)(b)(1) and (c) of this section shall be verified in writing [or-by-phone-contact].  
(6) The start date of ongoing employment, including hourly wage and number of hours and the availability of a new residence as specified in subsections (1)(b)(1) and (c) of this section, shall be verified in writing.  
(7) The cabinet shall provide follow-up case management to assist the family with the transition.  
(8) A family not currently receiving K-TAP and eligible to receive FAD may receive assistance to relocate as specified in 921 KAR 2.500.  
(9) (b) A K-TAP recipient may receive without penalty an offer of employment which would require relocation.  

Section 3. Hearing Rights. Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2.055.  

Section 4. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.  

(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, Undersecretary  
MARK D. BIRDWHISTELL, Secretary  

APPROVED BY AGENCY: November 14, 2006  
FILED WITH LRC: November 15, 2006 at 10 a.m.  

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 regarding this proposed administrative regulation until close of business January 2, 2007. 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, S W-B, Frankfort, Kentucky 40601, phone (502) 564-7705, 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 eligibility requirements and financial limitations of the KWP relocation assistance program.  
(b) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements and payment maximums for the KWP
relocation assistance program. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy families (TANF) block grant authorized by 42 U.S.C. 601-619 or Title IV-A of the Social Security Act. This administration regulation sets forth these standards in conformity with the Title IV-A (or TANF) State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation establishes eligibility criteria and financial limitations for the relocation assistance program, a public assistance program administered by the state.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to add a new section allowing the cabinet to recover improper KWP relocation assistance payments; extend eligibility for relocation assistance benefits to KWP participants who must relocate within 90 days of full-time employment in order to maintain their employment; and make technical corrections to ensure conformity with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure conformity with KRS 45.237(4), which requires the collection of improper payments. The enhanced eligibility criteria for the program will better enable KWP participants' access to meaningful employment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 205.200(2) by enhancing eligibility requirements and clarifying financial limitations of the KWP relocation assistance program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute through its enhancement of eligibility requirements and inclusion of mechanisms for the collection of improper payments.

(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 families who are receiving assistance from K-TAP, and working or living in a domestic violence situation. As of June 2006, there were 27,809 families receiving K-TAP, and for SYF 2006, there were 190 relocation assistance recipients.

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

- The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The cabinet may initiate payment recovery actions if an individual receives an improper relocation assistance payment due to error, fraud, or abuse. Also, the KWP participant may request relocation assistance up to 90 days past a hire date in order to maintain employment.

- In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost to the entities identified in question (3).

- A result of compliance, what benefits will accrue to the entities identified in question (3): KWP participants will receive the benefits of having a relocation assistance program to support their efforts towards self-sufficiency.

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

- Initially: There is no new initial cost to the cabinet. With regard to the ability to collect improper payments, the cabinet will save an undetermined amount in the current fiscal year.

- On a continuing basis: There is no new ongoing cost to the cabinet. With regard to the ability to collect improper payments, the cabinet will save an undetermined amount per year.

- What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal TANF funds and state Maintenance of Effort funds are 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 are no increases in fees or funding required with this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. KRS 205.200(2)
3. Minimum or uniform standards contained in the federal mandate, 42 U.S.C. 601-619
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 205.200(2)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? This program has been operational for numerous years. This amendment will not create any additional costs to the administrating agency or affected entities.

(d) How much will it cost to administer this program for subsequent years? This program has been operational for numerous years. This amendment will not create any additional costs to the administrating agency or affected entities.

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

- Revenues (+/-):
- Expenditures (+/-):

Other Explanation: The impact would be an increase in funds due to any collection received. As this is not an ongoing expenditure, it has not been budgeted - recovery of funds would be difficult to budget.
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NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 2006

GENERAL GOVERNMENT
State Board of Licensure for Professional Engineers and Land Surveyors
(New Administrative Regulation)

201 KAR 18:115. License reinstatement.

RELATES TO: KRS 322.160
STATUTORY AUTHORITY: KRS 322.160(3)(a), 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 322.160(3)(a) requires a licensee or permit holder who fails to renew within one (1) year after expiration to furnish the board with satisfactory evidence of qualification of continued practice. This administrative regulation establishes the requirements for license reinstatement.

Section 1. General Requirements. (1) Pursuant to KRS 322.160(3)(a), a person whose license has been expired, retired, or inactive for more than one (1) year shall apply for reinstatement by submitting to the board satisfactory evidence that the person is qualified to continue to practice. Satisfactory evidence may include, but is not limited to:
(a) Re-examination;
(b) Engineering or surveying related college courses;
(c) Engineering or surveying related continuing education courses;
(d) Work experience under another licensee; or
(e) Practice in another jurisdiction with a current license in that jurisdiction.
(2) The application shall be on forms prescribed and furnished by the board in accordance with KRS 222.070 and shall include:
(a) An affidavit indicating whether or not the applicant has practiced engineering or surveying in the Commonwealth of Kentucky since the expiration of the applicant’s license; and
(b) A listing of the specific evidence that the applicant is qualified to continue to practice per subsection (1) of this section.
(3) The applicant shall meet the requirements of KRS 322.050.
(4) A Professional Land Surveyor applicant shall meet the continuing professional development requirements of 201 KAR 18:192, Section 7.

Section 2. Expiration of License. (1) If the applicant’s license has been expired for three (3) years or less, or if the applicant has a valid license in another jurisdiction, the executive director may approve or reject such applications.
(2) If the applicant’s license has been expired for more than three (3) years and the applicant does not possess a valid license in another jurisdiction, the application shall be considered by the board.

Section 3. Revocation of License. (1) Pursuant to KRS 322.220, a person whose license has been revoked may petition the board to reissue.
(2) An applicant whose surrender of license was associated with a disciplinary investigation will be considered under this section.
(3) The applicant shall comply with Section 1 of this administrative regulation. In addition, the applicant shall provide evidence that the applicant:
(a) Has complied with any terms prescribed by the board; and
(b) Is no longer a risk to the public health, safety, and welfare.
The burden of proof is upon the applicant.
(3) All such applications will be considered by the board.

Section 4. Reconsideration. (1) If an application is not approved, the applicant will be given every reasonable opportunity to secure reconsideration.
(2) If an application is not approved by the executive director, the applicant may request reconsideration by the board.

(3) If an application is not approved by the board, the applicant may request a hearing in accordance with the provisions of KRS Chapter 13B.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: November 3, 2006
FILED WITH LRC: November 15, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 2 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2007. Send written notification of Intent to be heard at the public hearing or written comments on the proposed notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6587.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jonathan Buckley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the procedures for individuals seeking reinstatement of their professional engineer or professional land surveyor license.
(b) The necessity of this administrative regulation: KRS 322.160(3)(a) requires an individual seeking reinstatement of a license which has been expired for more than one year to apply for reinstatement and provide satisfactory evidence that the individual is qualified to continue practice. This regulation establishes the procedures for such reinstatement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements of the procedures for applying for license reinstatement pursuant to KRS 322.160(3)(a).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes reinstatement procedures so that the board can fairly and efficiently review reinstatement applications.
(2) If 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: This regulation will not affect any businesses, organizations, or state and local governments other than the board itself. This regulation will affect individuals applying for reinstatement of a professional engineering or professional land surveying license, which is estimated to be approximately 40 individuals annually.
(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this
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administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will continue to process reinstatement applications as it has in the past. Individual applicants will have to provide additional information within the application process as required by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change to the fee for the individual applicant submitting a reinstatement application and there will be no cost to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals applying for reinstatement will be required to submit additional materials which will assist the board in making an informed decision regarding licensure reinstatement.

(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: Restricted Agency Funds. The board receives no general or federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionate affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

(2) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Surveyors.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(4)

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:

(a) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-): Expenditures (+/-):

Other Explanation: This administrative regulation will not generate any additional cost or revenue.

GENERAL GOVERNMENT CABINET
Board of Nursing (New Administrative Regulation)

201 KAR 20:059. Advanced registered nurse practitioner controlled substances prescriptions.

RELATES TO: KRS 314.011(8)(c)
STATUTORY AUTHORITY: KRS 314.131(1).
Necessity, Function, and Conformity: KRS 314.011(8)(c) authorizes the Controlled Substances Formulary Development Committee to make recommendations to the Board of Nursing concerning any limitations for specific controlled substances. This administrative regulation implements that provision.

Section 1. Specific Controlled Substances. The following controlled substances have been identified as having the greatest potential for abuse or diversion:

1. Diazepam (Valium), a Schedule IV medication;
2. Lorazepam (Ativan), a Schedule IV medication;
3. Alprazolam (Xanax), a Schedule IV medication;
4. Lormetazepam (Somax), a Schedule IV medication;
5. Hydrocholone products in liquid or solid dosage form, Schedule III medications.

Section 2. Limitations. (1) Prescriptions for the medications listed in Section 1(1), (2), (3), and (4) of this administrative regulation shall be limited to a fourteen (14) day supply without any refills.

(2) Prescriptions for the medication listed in Section (1)(5) of this administrative regulation shall be limited to a thirty (30) day supply without any refills.

(3) Prescriptions for the medications listed in Section (1)(6) of this administrative regulation shall be limited to a fourteen (14) day supply without any refills.

SUSANDAVIS, President
APPROVED BY AGENCY: October 19, 2006
FILED WITH LRC: November 3, 2006 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on «HearingDate», 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 «CancellationDate», 5 working days prior to the hearing, of their intent to attend. Any notification of intent to attend the hearing is required by that date, the hearing may be canceled. All 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 January 2, 2007.

CONTACT PERSON: 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 implements KRS 314.011(8)(c) by listing specific controlled substances that have the greatest potential for abuse or diversion and setting limitations.

(b) The necessity of this administrative regulation: KRS 314.011(8)(c) authorizes the board to take such action as concerns ARNs and the prescribing of controlled substances.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 314.011(8)(c) allows the Controlled Substances Formulary Development Committee to make recommendations to the board concerning ARNP controlled substance prescriptive authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By Implementation of KRS 314.011(8)(c).

(2) If 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: ARNPs, approximately 3000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: ARNPs will be limited in the prescribing of certain listed medications.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will be in compliance with KRS 314.011(8)(c).
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 the administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 314.011 and KRS 314.131.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated for the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost.
(d) How much will it cost to administer this program for subsequent years? There will be no cost.

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

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as described in Section 4 of this administrative regulation;
(c) A system shall comply with the combined filter effluent require-
ments in Section 5 of this administrative regulation;
(d) A system that uses conventional or direct filtration shall comply
with the individual filter turbidity requirements of Section 6 of this
administrative regulation; and
(e) A system shall comply with the reporting and recordkeeping
requirements described in Section 7 of this administrative regula-
tion.

Section 3. Disinfection Profile. (1) Determination of systems
required to profile A community or nontransient noncommunity
water system shall develop a disinfection profile unless the cabinet
determines under subsection (2) of this section that a system pro-
file is unnecessary. The disinfection profile shall contain a graphi-
cal representation of the system’s level of Giardia lamblia or virus
inactivitation measured during the course of a year. The cabinet
may approve the use of a more representative data set for disin-
fecation profiling than the data set required in subsections (3) to (7)
of this section.

(2) The cabinet shall use only the following information in de-
determining if a system’s profiling is not required:
(a) The system’s total trhalomethane level is below 0.064
mg/L, and the haloacetic acid level is below 0.048 mg/L; and
(b) The data used to determine the levels shall have been
collected after January 1, 1998, during the month with the warmest
water temperature and at the point of maximum residence time in
the distribution system.

(3) Developing profile. A disinfection profile shall consist of
three (3) steps specified in paragraphs (a) to (c) of this subsection:
(a) 1. The system shall collect the data specified in subsection
(4) of this section over the course of twelve (12) months.
2. a. A system that serves between 500 and 9,999 persons
shall have begun to collect the data no later than July 1, 2003.
b. A system that serves fewer than 500 persons shall have
 begun to collect the data no later than July 1, 2004.
(b) The system shall use the data collected to calculate weekly
log inactivations, as discussed in subsections (5) and (6) of this
section; and
(c) The system shall use the weekly log inactivations to de-
velop a disinfection profile as specified in subsection (7) of this
section.

(4) Data required. The following parameters shall be monitored
to determine the total log inactivating using the analytical methods
in 40 C.F.R. 141.74(a), September 18, 1998, once per week on the
same calendar day, over twelve (12) consecutive months:
(a) The temperature of the disinfected water at each residual
disinfectant contact sampling point during peak hourly flow;
(b) If chlorine is used, the pH of the disinfected water at each
sampling point during peak hourly flow;
(c) The disinfectant contact time, or "T", during peak hourly
flow; and
(d) The residual disinfectant concentration, or "C", of the water
before or at the first customer and before each additional point of
disinfection during peak hourly flow.

(5) Calculation of inactivation ratio and log inactivation.
(a) The total inactivation ratio shall be calculated as follows:
1. If the system uses only one (1) point of disinfectant applica-
tion:
a. One (1) inactivation ratio before or at the first customer dur-
 ing peak hourly flow as follows: CT_{in} / CT_{in};
 or
b. Successive ratio values, CT_{in} / CT_{in}, representing sequen-
tial inactivation ratios, between the point of disinfectant applica-
tion and a point before or at the first customer during peak hourly flow.
Under this alternative, the system shall calculate the total inactiva-
tion ratio by determining CT_{in} / CT_{in} for each sequence and then
adding the CT_{in} / CT_{in} values together to determine their summa-
tion, or \( \sum (CT_{in} / CT_{in}) \). 
2. If a system uses more than one (1) point of disinfectant applica-
tion before the first customer, the system shall determine the
CT value of each disinfection segment immediately before the next
point of disinfectant applicator, or for the final segment, before or
at the first customer, during peak hourly flow. The CT_{in} / CT_{in}
value of each segment and \( \sum (CT_{in} / CT_{in}) \) shall be calculated
using the method in subparagraph 1b of this paragraph.
(b) The log inactivation of Giardia lamblia shall be determined
by multiplying the total inactivation ratio by three and zero-tenths
(3.0).

(6) A system that uses chloramines, ozone, or chlorine dioxide
for primary disinfection shall calculate the logs of inactivation for
viroles and shall develop an additional disinfection profile using a
method specified in 401 KAR 8:150.

(7) Disinfection profile.
(a) A system shall calculate the inactivation ratio every week
for fifty-two (52) consecutive weeks. Each log inactivation ratio
shall serve as a data point in the disinfection profile. The system
shall retain the disinfection profile data in a graphic form, such as a
spreadsheet.
(b) The disinfection profile shall be available for review by the
cabinet as part of a sanitary survey pursuant to 401 KAR 8:022.
(c) If the system is considering changes to disinfection prac-
tices, these data shall be used to calculate a benchmark pursuant
to Section 4 of this administrative regulation.

Section 4. Disinfection Benchmark. A public water system
required to perform a disinfection profile under Section 3 of this
administrative regulation shall develop a disinfection benchmark
before making a significant change in the distribution practice and shall
consult with the cabinet for its approval before initiating any
change, according to the procedures in this section.

(1) A significant disinfection practice change shall include:
(a) A change to the point of disinfection;
(b) A change to the disinfectant used in the treatment plant;
(c) A change in the disinfection process; or
(d) Another modification identified by the cabinet.
(2) A system that is considering a significant change to the
disinfection practice shall submit the information required in sub-
section (3) of this section and the disinfection benchmark calcu-
lated according to subsections (4) and (5) of this section to the
cabinet for its approval. A system shall not implement a significant
change until it has obtained cabinet approval.

(3) The following information shall be submitted to the cabinet
as part of the consultation and approval process:
(a) A description of the proposed change;
(b) The disinfection profile for Giardia lamblia and viruses, if
necessary, and the disinfection benchmark;
(c) An analysis of how the proposed change will affect the
current levels of disinfection; and
(d) Any other information requested by the cabinet that is nec-
sessary for the cabinet to determine whether to approve the signifi-
cant change.
(4) Calculation. The disinfection benchmark shall be calculated
according to the following procedure:
(a) Using the data collected to develop the disinfection profile,
determine the average Giardia lamblia inactivations for each calen-
dary month by dividing the sum of all Giardia lamblia inactivations
for that month by the number of values calculated for that month.
(b) Determine the lowest monthly average value out of the
twelve (12) values. This lowest value shall be the disinfection
benchmark.
(5) A system that uses chloramine, ozone, or chlorine dioxide
for primary disinfection shall calculate the disinfection benchmark
from the data collected for viruses to develop the disinfection pro-
file, in addition to the Giardia lamblia disinfection benchmark calcu-
lated under subsection (4) of this section. This viral benchmark
shall be calculated in the same manner used to calculate the
Giardia lamblia disinfection benchmark in subsection (4) of this
section.

Section 5. Combined Filter Effluent Requirements. A public
water system that uses filtration other than slow sand filtration or
diatomaceous earth filtration shall meet the combined filter effluent
turbidity requirements specified in subsections (1) to (3) of this
section. A system that uses slow sand or diatomaceous earth filtra-
tion may meet the combined filter effluent turbidity limits of this
administrative regulation, but shall continue to meet the combined
filter effluent turbidity limits in 401 KAR Chapter 8:150 Section 2(2)
and (3).
(1) Turbidity treatment technique requirements:
   (a) A system that uses conventional filtration or direct filtration shall meet the following two (2) combined filter effluent turbidity limits:
      1. 0.3 NTU in ninety-five (95) percent of the readings each month. This shall be the 95th percentile reading; and
      2. A maximum turbidity limit of one (1) NTU, which shall not be exceeded.
   (b) A system that uses alternative filtration shall meet the two (2) turbidity limits, which are determined by the cabinet based on the demonstration described in subsection (2) of this section, of:
      1. A 95th percentile value, which shall not be more than one (1) NTU; and
      2. A maximum turbidity limit, which shall not be more than five (5) NTU.
   (c) The measurements for paragraphs (a) and (b) of this subsection shall be taken as described in 40 C.F.R. 141.74(a) and (c), September 18, 1998; the system shall complete and submit monthly reports pursuant to Section 7 of this administrative regulation.

(2) Alternative filtration demonstration. A system that uses filtration other than slow sand filtration, diatomaceous earth filtration, conventional filtration, or direct filtration shall demonstrate to the cabinet, using pilot plant studies or other means, that the system's filtration, in combination with disinfection treatment, consistently achieves:
   (a) Ninety-nine (99) percent (2-log) removal of Cryptosporidium oocysts;
   (b) Ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lambia cysts; and
   (c) 99.9 percent (4-log) removal or inactivation of viruses.

(3) Lime softening. A system that practices lime softening may acidify representative combined filter effluent turbidity samples before analysis using a protocol specified by the "Long Term 1 Enhanced Surface Water Treatment Rule Turbidity Provisions: Technical Guidance Manual, August 2004", incorporated by reference in Section 8 of this administrative regulation.

Section 6. Individual Filter Turbidity Requirements. (1) A system that uses its source surface water or groundwater under the direct influence of surface water, that serves fewer than 10,000 persons, and that uses conventional filtration or direct filtration shall conduct continuous monitoring for turbidity at each individual filter in the system. The system shall:
   (a) Conduct monitoring using an approved method in 40 C.F.R. 141.74(a), September 18, 1998;
   (b) Calibrate the turbidimeter using procedures specified by the manufacturer;
   (c) Record every fifteen (15) minutes the results of the turbidity monitoring;
   (d) Complete and submit monthly reports according to Section 7(1) of this administrative regulation; and
   (e) Maintain records according to Section 7 of this administrative regulation.

(2) Equipment failure. If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four (4) hours instead of continuous monitoring, until the turbidimeter is back on line if the continuous monitoring is not resumed within fourteen (14) days, the system shall be in violation of this administrative regulation.

(3) Special provisions. If a system consists of two (2) or fewer filters, the system may conduct continuous monitoring of combined filter effluent turbidity instead of individual filter effluent turbidity monitoring. The continuous monitoring shall meet the requirements set forth in subsections (1)(a) to (d) and (2) of this section.

(4) Follow-up action.
   (a) If the turbidity of an individual filter, or the turbidity of combined filter effluent for a system with two (2) filters that monitors the combined filter effluent instead of individual filters, exceeds one (1) and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart, the system shall report to the cabinet by the tenth day of the following month. The report shall include:
      1. The filter number;
      2. Date of exceedance;
      3. Turbidity values that exceeded one and zero-tenths (1.0) NTU; and
      4. The cause of the exceedance, if known.
   (b) If a system is required to report to the cabinet:
      a. For three (3) consecutive months, and the turbidity exceeds one and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart at the same filter, or combined filter effluent for a system with two (2) filters that monitors combined filter effluent instead of individual filters, the system shall conduct a self-assessment of each filter within fourteen (14) days of the day the filter exceeded one and zero-tenths (1.0) NTU in two (2) consecutive measurements for the third straight month unless a comprehensive performance evaluation is specified in clause b of this subparagraph is required. A system with two (2) filters that monitors combined filter effluent instead of individual filters shall conduct a self-assessment on both filters. The self-assessment shall consist of at least the following:
         (i) Assessment of filter performance;
         (ii) Development of a filter profile;
         (iii) Identification and prioritization of factors that limit filter performance;
         (iv) Assessment of the applicability of corrections;
         (v) Preparation of a filter self-assessment report;
         (vi) The date the report was triggered; and
         (vii) The date the report was completed.
      b. For two (2) consecutive months and, the turbidity exceeded one and zero-tenths (1.0) NTU in two (2) consecutive recordings that were fifteen (15) minutes apart at the same filter, or combined filter effluent for a system with two (2) filters that monitors combined filter effluent instead of individual filters, the system shall be required to conduct a comprehensive performance evaluation conducted by the cabinet or a third party approved by the cabinet, no later than sixty (60) days following the day the filter exceeded two (2) consecutive two (2) consecutive measurements for the second straight month.

(i) If a comprehensive performance evaluation has been completed by the cabinet or a third party approved by the cabinet within the twelve (12) previous months, or the system and cabinet are jointly participating in an ongoing comprehensive technical assistance project at the system, a new comprehensive performance evaluation shall not be required.

(ii) If conducted, a comprehensive performance evaluation shall be completed and submitted to the cabinet no later than 120 days after the day the filter exceeded two (2) consecutive two (2) consecutive measurements in two (2) consecutive measurements for the second straight month.

(5) Lime softening. A system that practices lime softening may apply to the cabinet for alternative turbidity exceedance levels for the levels specified in the follow up actions required in subsection (4) of this section. The system shall be able to demonstrate to the cabinet that higher turbidity levels are due only to lime carryover and are not due to degraded filter performance.

Section 7. Reporting and Recordkeeping (1) A system shall report combined filter effluent information, by the tenth day of the following month. This report shall include:
   (a) Total number of filtered water turbidity measurements taken during the month;
   (b) Number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the system's required 95th percentile limit; and
   (c) Date and value of any turbidity measurements taken during the month that exceed the maximum turbidity value for the filtration system.

(2) A system shall report Individual filter effluent information by the tenth day of the following month unless noted otherwise. This report shall include:
   (a) That the system has conducted individual filter turbidity monitoring;
   (b) The filter number, corresponding date, and turbidity values that exceeded one and zero-tenths (1.0) NTU during the month, but only if two (2) consecutive measurements exceeded one and zero-tenths (1.0) NTU,
   (c) If a self-assessment is required, the date that it was triggered.

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gered and the date that it was completed. This information shall be submitted to the cabinet by the tenth day of the following month, or, if the self assessment was triggered only during the last four (4) days of the month, within fourteen (14) days after the self-assessment was triggered;

(d) If a comprehensive performance evaluation is required, the fact that the evaluation was required and the date that it was triggered;

(e) Copy of completed comprehensive performance evaluation within 120 days after the evaluation was triggered.

(3) Disinfection profiling. The following information shall have been submitted to the cabinet by July 1, 2003 for a system that serves 500 to 9999, or July 1, 2004 for a system that serves less than 500:

(a) The fact that the system has begun disinfection profiling; or

(b) If the system forgoes profiling, the results of optional monitoring that shows levels of total trihalomethanes less than 0.054 mg/L and levels of haloacetic acids less than 0.048 mg/L.

(4) Disinfection benchmarking. If the system is considering a significant change to its disinfection practice, the system shall submit to the cabinet:

(a) A description of the proposed change in disinfection;

(b) The system’s disinfection profile for Giardia lamblia and viruses if necessary;

(c) The system’s disinfection benchmark; and

(d) An analysis of how the proposed change will affect the current levels of disinfection.

(5) Recordkeeping. In addition to the recordkeeping requirements of 40 C.F.R. 141.75 (January 16, 2001), the system shall maintain the following records for the indicated period:

(a) Results of individual filter monitoring: At least three (3) years; and

(b) Results of profile and benchmark data, including raw data and analyses: Indefinitely.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. or through www.water.ky.gov.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 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. 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 request a transcript, you may be required to pay for it. 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 January 2, 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: Justin Dearinger, Regulations Coordinator, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation is necessary so that Kentucky can receive primacy from the U.S. Environmental Protection Agency for the implementation and enforcement of the federal regulation for enhanced filtration and disinfection in 40 C.F.R. Part 141, Subpart T (40 C.F.R. 141.500 - 141.571).

(b) The necessity of this administrative regulation: This regulation establishes requirements for filtration and disinfection for specified public water systems that serve a population of less than 10,000 people and extends treatment technique requirements in lieu of maximum contaminant levels for Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity.

(c) How the administrative regulation conforms to the content of the authorizing statutes: This regulation will be consistent with the federal regulation that went into effect on January 1, 2005.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will incorporate into Kentucky’s regulations the same provisions that were amended by U.S. Environmental Protection Agency in 40 C.F.R. Part 141, Subpart T (40 C.F.R. 141.500-141.571).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects public water systems, community and noncommunity, that use as their source surface water or groundwater under the direct influence of surface water, and that serve a population of less than 10,000 people. Some of these small systems are small businesses.

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

(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public Water Systems may have to add or modify their filtration system in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a cost associated with the modification or addition of drinking water filtration systems. These costs are on a case by case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public Water Systems meeting the requirements of this amendment would be ensuring the quality of the water provided to the public and avoid any resulting non-compliance actions.

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

(a) Initially: None anticipated.

(b) On a continuing basis: None anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees established, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is applied simply due to the federal regulation, which addresses only systems serving less than 10,000 people.
FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal regulation for enhanced filtration and disinfection is in 40 C.F.R. Part 141, Subpart T (40 C.F.R. 141.500 - 141.571).
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. This regulation will be consistent with the federal regulation that went into effect on January 1, 2005.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public water systems serving less than 10,000 people will be affected by this amended administrative regulation.
3. Identify much state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 40 C.F.R. 141.74, 141.500 - 141.571, and 42 U.S.C. Chapter 6A, Subchapter XII
4. Evaluate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? No cost.
   (d) How much will it cost to administer this program for subsequent years? No Cost.

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

Revenues (+/-): None anticipated.
Expenditures (+/-): None anticipated.
Other Explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Repealer)


RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. Part 141, 141.24, 141.30, 142.50
STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.24(e), 141.29, 141.30, 42 U.S.C. Chapter 6A Subchapter XII
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation repeals Kentucky's current administrative regulation on disinfection by-products, which is no longer used.

Section 1. 401 KAR 8.500, Disinfection by-products, is hereby repealed.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: November 14, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 1, 2006 at 10 a.m., Eastern Time, at the Kentucky Division of Water, Room 5A, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 2, 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: Justin Deeringer, Regulations Coordinator, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals the current administrative regulation for disinfection by-products, 401 KAR 8:500.
(b) The necessity of this administrative regulation: The U.S. Environmental Protection Agency promulgated new regulations that apply to disinfectants, disinfectant residuals, and precursors. It also amended its regulations on disinfection by-products to state that the former regulations do not apply after December 2003. The cabinet has promulgated a new regulation that adopts the new federal regulation and is therefore repealing the former regulation, which is no longer applicable.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is part of a comprehensive program for the regulation and purification of water for public and semipublic use.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Since Kentucky has incorporated the new federal regulation on this topic, the former regulation is no longer necessary or applicable.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How this amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No public water systems will be affected by the repeal of this administrative regulation, since the regulation no longer is applicable.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3). There will be no benefits to identified entities.

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

(a) Initially: There are no initial costs as a result of repealing this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of repealing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this administrative regulation merely repeals 401 KAR 8:500.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Not Applicable.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Not Applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Not Applicable.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not Applicable.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not Applicable.

(c) How much will it cost to administer this program for the first year? Not Applicable.

(d) How much will it cost to administer this program for subsequent years? Not Applicable.

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

Revenues (+/-): Not Applicable.
Expenditures (+/-): Not Applicable.
Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Repealer)


RELATES TO: KRS 237.110
STATUTORY AUTHORITY: KRS 16 060, 17 060, 237.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS
237.110(1) requires the department to issue and renew licenses to carry concealed firearms or other deadly weapons. This administrative regulation repeals 502 KAR 11 030, Denial of Application Form and Consideration Process, because the procedures are no longer utilized in the application process.

Section 1. 502 KAR 11:030, Denial of Application Form and Consideration Process, is hereby repealed.

JOHN (JACK) ADAMS, Commissioner
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on the 21st day of December, 2006 at 9 30 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 14th day of December, 2006, five work-days prior to the hearing, of their intent to attend. If you have a disability for which the Department of State Police needs to provide accommodations, please notify us of your requirement by the 14th day of December, 2006. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the 2nd day of January, 2007. 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: Karen Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person Karen Howard

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation repeals 502 KAR 11:030, Denial of Application Form and Consideration Process, because the procedures are no longer utilized in the application process.

(b) The necessity of this administrative regulation:
KRS 237.110(1) requires the department to issue and renew licenses to carry concealed firearms or other deadly weapons. This administrative regulation repeals 502 KAR 11:030, Denial of Application Form and Consideration Process, because the procedures are no longer utilized in the application process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 237.110(1) requires the department to issue and renew licenses to carry concealed firearms or other deadly weapons. This administrative regulation repeals 502 KAR 11:030, Denial of Application Form and Consideration Process, because the procedures are no longer utilized in the application process.

(d) How this administrative regulation currently assists or will assist in the effective implementation of the statutes: It will repeal outdated procedures that are no longer utilized.

(2) If 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 implementation 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 carry concealed deadly weapon licensees, all county sheriffs, and the Department of State Police.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outdated procedures will be repealed.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost
(b) On a continuing basis: No cost
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, see response to 5(a).
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, see response to 5(a).
(9) TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police and all county sheriffs.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.110
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No cost
(d) How much will it cost to administer this program for subsequent years? No cost
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Other Explanation: See (4)(a)-(d) for explanation.

NORTHERN KENTUCKY UNIVERSITY
(New Administrative Regulation)
760 KAR 1:070. Capital construction procedures.
RELATES TO: KRS 164A.575, 164A.580, 164A.585, 164A.590, 64A.595, 164A.600
STATUTORY AUTHORITY. KRS 164A.560
NECESSITY, FUNCTION AND CONFORMITY: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.550 to 164A.630 by issuing regulations to do so. This administrative regulation implements the provisions of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600 at Northern Kentucky University.

Section 1. The president acting on behalf of the Board of Regents and under the provisions of KRS 164A.560, elects to perform all functions relating to capital construction in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600.

MARTIN C. BUTLER, Chair
DENISE H. MCCLELLAND, Secretary
APPROVED BY AGENCY: September 6, 2006
FILED WITH LRC: November 14, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held Friday, December 22, 2006 at 10 a.m., EDT, in Room 11, University Center, Northern Kentucky University, Highland Heights, Kentucky 41099. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, December 15, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend this meeting is received by that date, the meeting 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 the transcript is made. Written comments shall be accepted until January 2, 2007. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation during this period. Send written notification to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below.
CONTACT PERSON: Mr. Larry Blake, Assistant Vice President for Facilities Management, Northern Kentucky University, Lucas Administrative Center Room 726, Nunn Drive, Highland Heights, Kentucky 41099, phone (859) 572-1927, fax (859) 572-1356.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Mr. Larry Blake
(1) Provide a brief summary of:
(a) What this administrative regulation does:
This administrative regulation allows Northern Kentucky University, under the provisions of KRS 164A.560, to manage and administer capital construction projects in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600.
(b) The necessity of this administrative regulation:
This administrative regulation is necessary to allow Northern Kentucky University to manage and administer capital construction projects at the agency level instead of transferring this responsibility to the Department for Facilities Management.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative relation fully conforms to the requirements of KRS 164A.560 to allow the governing boards of the post-secondary educational institutions to manage and administer capital projects at the agency level instead of the state government level. This will result in more timely decisions on issues relating to savings for the University.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to the existing administrative regulation:
(c) How the amendment conforms to the content of the author-
izing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation are Northern Kentucky University and the Finance and Administration Cabinet's Department for Facilities and Support Services and its Division of Engineering and Contract Administration. This regulation will have no affect on any other business, organization, or state and local government. Within Northern Kentucky University, this regulation will affect the director, three project managers and a CAD Technician, Purchasing Department (one buyer) and Contract Administration (one accountant). Within the Department for Facilities Management, its Division of Engineering and Contract Administration will be affected. It is hard to determine the actual FTE impact this regulation will have. There is one project manager that devotes a portion of this time to NKU projects based upon the current workload. Other resources such as buyers are assigned from the staff as needed.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Over the past few years, Northern Kentucky University has determined that it was prudent to maintain a project management staff to work with the Department for Facilities and Support Services. Since the Department for Facilities and Support Services project management team needs to be on campus and available at all times, the project manager helps oversee the day-to-day operations. At the present level of construction activity, Northern has in place adequate staff to manage existing and pending projects. As the workload increases, Northern will adjust the types and number of positions as required to manage its projects. (a) List the actions that each of the regulated entities identified in question (3) have taken to comply with this administrative regulation or amendment: Northern Kentucky University will assume management and oversight of its construction projects. The Department for Facilities and Support Services will assist with the transition of projects to the University and continue to manage projects that are too far advanced to effectively transfer to the University for Management. Once those projects are either transitioned or completed the Department will no longer be involved in the University's construction program.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The added cost to Northern Kentucky University will be primarily the added staff required to manage its construction program. Since it was deemed necessary to add staff to supplement the current management personnel, this added cost to the Department for Facilities and Support Services program this cost will be minimal. The University has already hired staff sufficient to manage current projects and will add staff as required to support any significant increase in workload. All other project related costs are charged directly to the project under the current arrangement by the Department for Facilities and Support Services and will continue to be charged in the same fashion. The total added cost to the university including the staff already in place is anticipated to be $300,000 annually. The Department for Facilities and Support Services will see a reduction in staff requirement as a result of this regulation. Although that will not result in cost or staff reductions it will allow the department to better manage the projects at other locations.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this regulation Northern Kentucky University will be able to directly manage the schedule, budget, design and construction for its major facility projects. Since the oversight of these projects will be local better overall control will be realized. The Department for Facilities and Support Services should also realize a positive impact from this regulation. For the past few years, this department has been operating past its capacity. By removing the load, it should be able to operate more effectively.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Northern Kentucky University has added staff and operating expenses in the amount of $300,000 to the 2006-2007 fiscal year budget. As a result, the University now has an organization in place that works along side the Department for Facilities and Support Services. This organization has a current operational budget of $450,000 that is funded by the University. The Department for Facilities and Support Services may incur moderate administrative costs associated with the University's election to implement KRS 164.550 relating to capital construction. Such costs may be incurred as a result of the development of the transition plan with the University for current capital construction projects. The Department for Facilities and Support Services should incur considerable long term savings in its Division of Engineering and support Administration. These savings should see a substantial reduction in their workloads relating to Northern Kentucky University projects. The Division of Engineering will no longer be responsible for project management and accounting related duties. This will affect their office staff as well as field representative that visit the project sites on a routine basis. Site visits will no longer be required by state personnel. Although the Division of Contract Administration is compensated for project bid expenditures such as plan and specification reproduction costs and postage/mailing costs, it should incur substantial saving as a result of not having personnel assigned to the bidding or procurement of capital construction project goods or services relating to Northern Kentucky University projects.
(6) How the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation and enforcement of this regulation will come from University funds with a potential of supplemental funding from the collection of fees from projects performed within the university.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: If the workload increases above the current level, additional funding will be required. Fees required above the current level of funding will come from additional work. The Department for Facilities and Support Services should not have any cost beyond the first year identified in 5(a) above. The savings in the out years should be perpetual.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation will establish any new fees at this time. The University may consider a management fee for university-managed projects at a later date. No general campus-wide fee will be charged to implement this regulation.
(TIERING: Is tiering applied?) No, tiering is not applied. The University is directed, by statute, in the manner by which the proposed regulation is to be implemented. The application of this regulation is not variable based upon other factors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Northern Kentucky University's Purchasing, Accounting and Facilities Management Department and the Finance Cabinet's, Department for Facilities and Support Services. No other state or local government agencies are impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative
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regulation. KRS 164A.560

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only added expenditure will be that associated with the University's construction project management effort.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated due to the implementation of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated due to the implementation of this regulation.

(c) How much will it cost to administer this program for the first year? $300,000 for project management staff. However, most of the staff required is now in place and would be required to supplement the Department for Facilities and Support Services management and inspection of the University’s construction program.

(d) How much will it cost to administer this program for subsequent years? $300,000 for project management staff. However, most of the staff required is now in place and would be required to supplement the Department for Facilities and Support Services management and inspection of the University's construction program.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
Office of the Ombudsman
(Repealer)


RELATES TO: 21 C.F.R. 56.110, 45 C.F.R. 46.101-46.409
STATUTORY AUTHORITY: KRS 194A.050(1), 45 C.F.R. 46.101(a)

NECESSITY, FUNCTION, AND CONFORMITY: 45 C.F.R. 46.101(a) requires the cabinet to have an Institutional Review Board for the Protection of Human Subjects to protect the rights and welfare of human subjects involved in research. KRS 194A.050(1) requires the secretary by administrative regulation to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The administrative regulation acts specifically to repeal 900 KAR 1:060, Protection of Human Subjects 900 KAR 1:060, which is cited under the previous established Cabinet for Health Services, is no longer needed because the same provisions are under 920 KAR 1:060, Protection of Human Subjects, under the reorganization of the new Cabinet for Health and Family Services.

Section 1. 900 KAR 1:060, Protection of Human Subjects, is hereby repealed.

SANDRA BROCK, Ombudsman
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 January 2, 2007. 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 502-564-7795, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:
(a) What this administrative regulation does: This is a new administrative regulation that acts specifically to repeal 900 KAR 1:060, Protection of Human Subjects.
(b) The necessity of this administrative regulation: 900 KAR 1:060 is quite similar to the existing Cabinet for Health Services A reorganization of cabinets occurred. The Cabinet for Health Services and the Cabinet for Families and Children is now one cabinet - the Cabinet for Health and Family Services. Both cabinets had their separate regulations for protection of human subjects. It is not necessary to have 2 regulations with the same subject matter under 1 cabinet, therefore, it is necessary to repeal 900 KAR 1:060.
(c) How this administrative regulation conforms to the content of the authorizing statutes: 45 C.F.R. 46.101(a) requires the cabinet to have an Institutional Review Board for the Protection of Human Subjects to protect the rights and welfare of human subjects involved in research. The cabinet conforms to this statute under 920 KAR 1:160, Protection of Human Subjects. This administrative regulation acts specifically to repeal 900 KAR 1:160.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The requirements for effective administration of the statute 45 C.F.R. 46.101(a) are established in 920 KAR 1:160. This administrative regulation acts specifically to repeal 900 KAR 1:160.

(2) If 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 but a new regulation that repeals an existing administrative regulation, 900 KAR 1:060, Protection of Human Subjects.
(b) The necessity of the amendment to this administrative regulation: Refer to (2)(a)
(c) How the amendment conforms to the content of the authorizing statutes: Refer to (2)(a)
(d) How the amendment will assist in the effective administration of the statutes: Refer to (2)(a)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The type and number of entities affected are regulated under 920 KAR 1:060. This administrative regulation acts specifically to repeal 900 KAR 1:060.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities are not affected by this administrative regulation which only acts specifically to repeal 900 KAR 1:060.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Repealer)


RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194A.050, 211.890
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Public Health, has the responsibility to administer the Radiation Program. KRS 211.870, 211.890, and 211.993 authorizes the department to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation repeals 902 KAR 105:060 which is no longer needed because it has been combined with another regulation in this chapter.

Section 1. 902 KAR 105:060, Podiatrist Supervision, is hereby repealed.

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006
FILED WITH LRC: November 15, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2006, five (5) 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 canceled. 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 January 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: JL 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: Dewey C. Crawford 564-3700 extension 3695

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 105:060, Podiatry Supervision, as its provisions have been combined with another regulation.
(b) The necessity of this administrative regulation. This regulation is necessary because the provisions of 902 KAR 105:060, Podiatry Supervision, have been combined with another regulation and are no longer required to be stated in a separate regulation.
(c) How this administrative regulation conforms to the content of the enacting statutes: The statutory authority for the promulgation of an administrative regulation relating operators of sources of radiation is KRS 194A.050, 211.090, 211.870, 211.890, and 211.993 stating that the Cabinet for Health Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Office of the Ombudsman, Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 46.101(a) and KRS 194A.050(1).

4. Estimate the effect of the administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue generated for state or local government. This administrative regulation acts specifically to repeal regulation 900 KAR 1:060.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 4(a).
(c) How much will it cost to administer this program for the first year? No cost. This administrative regulation acts specifically to repeal regulation 900 KAR 1:060.
(d) How much will it cost to administer this program for subsequent years? Refer to 4(c).

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 46.101(a).
2. State compliance standards. KRS 194A.050(1).
3. Minimum or uniform standards contained in the federal mandate. None.
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 acts specifically to repeal regulation 900 KAR 1:060.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See 4.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal 902 KAR 105:060 and thereby eliminate duplicate language and provisions which can be found in 902 KAR 105:060.

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

(a) How the amendment will change this existing administrative regulation:
   (i) This is not an amendment but a new regulation that repeals 902 KAR 105 060, Podiatrist supervision.

(b) The necessity of the amendment to this administrative regulation: See (2)(a).

(c) How the amendment conforms to the content of the authorized statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 state health care organizations with approximately 400 individuals currently performing nuclear medicine procedures or radiation therapy treatments in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of becoming familiar with these regulations should be negligible. The specific cost associated with this new regulation will be time spent reading the provisions pertaining to Podiatrist Supervision now contained in 902 KAR 105:060.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This repeal regulation eliminates redundant language. The regulated entities will not be confused by duplicate language occurring in 2 regulations.

(c) Provide an estimate of how much it will cost to implement this administrative regulation:
   (i) Initially: No additional cost will be incurred as a result of this new administrative regulation. This program is funded by agency receipts.
   (ii) On a continuing basis: No additional cost will be incurred as a result of this new administrative regulation. This program is funded by agency receipts.
   (iii) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Radiation Operator Certification Fees collected in accordance with KRS 902 KAR 105:020.

(5) Provide an assessment of whether an 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 new administrative regulation will not require an increase in fees in order to implement it.

(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, directly or indirectly.

(7) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any parts having to do with healing arts where radiation producing equipment is used.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.870, 211.890, and 211.993

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None, this regulation acts to repeal 902 KAR 105:060.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See (4)(a).
   (c) How much will it cost to administer this program for the first year? None, this regulation acts to repeal 902 KAR 105:060.
   (d) How much will it cost to administer this program for subsequent years? None, this regulation acts to repeal 902 KAR 105:060.

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

Revenues (+/-):
Expenses (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)


RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194A.050, 211.090(b)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890, and 211.993 to regulate an operator of a source of radiation other than a licensed practitioner of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curriculum standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform requirements for the certification of limited certificate holders.

Section 1. Applicability. (1) This administrative regulation shall apply to individuals who perform limited human diagnostic radiography while under the supervision of a medical, osteopathic, or chiropractic licensed practitioner, or a certified radiation operator and who successfully completes the requirements for the limited x-ray machine operator certification.

(2) These procedures shall include routine chest and thorax, extremity, extremity, podiatric, vertebral column radiography, and bone densitometry procedures.

(3) These procedures shall exclude those involving contrast media, fluoroscopic equipment, mammography, computed tomography, bedside radiography, nuclear medicine, or radiation therapy procedures.

Section 2. Eligibility for a Limited X-ray Machine Operator Certificate. (1) No person shall be eligible for a limited x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(a) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; or

(b) Satisfactorily completed a course of study in limited x-ray machine operations approved by the cabinet through a post-
secondary institution or an independent study course. 

(2) The approved post-secondary course of study shall include a minimum of 240 hours of class room work including the following subjects: 
(a) Human structure and function; 
(b) Medical terminology;  
(c) Radiation protection; 
(d) Radiation biology;  
(e) Medical ethics and law;   
(f) Equipment operation and maintenance; 
(g) Image production and evaluation;  
(h) Radiographic processing technique; (i) Radiographic procedures; (j) Patient positioning; and 
(k) Patient care. 

(3) The approved post-secondary course of study shall include an adequate number of hours, but not less than 360 hours, to be devoted to clinical experience consisting of demonstrations, discussion, and supervised practice. 

(4) An approved independent study course shall include, but not be limited to, the following subjects: 
(a) Human structure and function;   
(b) Medical terminology;  
(c) Radiation protection;  
(d) Radiation biology;  
(e) Medical ethics and law;  
(f) Equipment operation and maintenance;  
(g) Image production and evaluation;   
(h) Radiographic processing technique;  
(i) Radiographic procedures;  
(j) Patient positioning;  
(k) Patient care. 

(5) An approved independent study course shall include a minimum of fifty (50) radiographic examinations in each of the following areas: 
(a) Chest;   
(b) Extremities;  
(c) Musculoskeletal. 

(6) The clinical experience shall be obtained at the student's place of employment, an alternate facility, or a combination of the two (2). The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience can begin only after the student has successfully completed the first six (6) chapters in the provided textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment. 

Section 3. Eligibility for a Limited Podiatry X-ray Machine Operator Certificate. No person shall be eligible for a limited podiatry x-ray machine operator certificate for human diagnostic radiographic purposes unless he has: 

(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and 
(2) Satisfactorily completed an independent limited course of study in podiatric radiography approved by the cabinet. 

(a) The approved independent study course shall include, but not be limited to the following subjects: 
1. Human structure and function; 
2. Medical terminology; 
3. Radiation safety and protection; 
4. Radiation biology; 
5. Medical ethics and law; 
6. Equipment operation and maintenance;  
7. Image production and evaluation; 
8. Radiographic processing technique; 
9. Radiographic procedures; 
10. Patient positioning; and 

(b) An approved independent study course in podiatric radiography shall include a minimum of fifty (50) radiographic examinations of the feet and ankles. 

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator. Clinical experience can begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment, and 
(3) Satisfactorily passed an examination conducted or approved by the cabinet. 

Section 4. Eligibility for a Limited Bone Densitometry X-ray Machine Operator Certificate. No person shall be eligible for a limited bone densitometry x-ray machine operator certificate for human diagnostic radiographic purposes unless he has: 

(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and 
(2) Satisfactorily completed an independent limited course of study in bone densitometry approved by the cabinet.  

(a) The approved independent study course shall include, but not be limited to, the following subjects: 
1. Human structure and function; 
2. Medical terminology; 
3. Radiation safety and protection; 
4. Radiation biology; 
5. Medical ethics and law; 
6. Equipment operation and maintenance; 
7. Image production and evaluation; 
8. Radiographic processing technique; 
9. Radiographic procedures; 
10. Patient positioning; and 

(b) The approved independent study courses shall include a minimum of fifty (50) bone densitometry examinations. 

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience can begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. The bone densitometry student should also receive manufacturer's training. Course requirements shall be completed within one (1) year from date of enrollment. 

(3) Satisfactorily passed an examination conducted or approved by the cabinet. 

Section 5. Temporary Certificate. The cabinet may, upon proper application and upon payment of the appropriate fees, issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in limited medical radiography, podiatry radiography, and bone densitometry and who meets the other requirements of these administrative regulations, other than having taken the required examination. 

Section 6. Approved Radiographic Examinations for the Limited X-ray Machine Operator. Limited x-ray machine operators are limited to performing the following examinations: 
(1) Limited X-ray Machine Operator Certification: 
(a) Radiography of the thorax, lungs, and ribs; 
(b) Radiography of the skull and facial structures;  
(c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and 
(d) Radiography of the cervical, thoracic, and lumbar spines. 
(2) Limited Podiatry X-ray Machine Operator Certification, including radiography of the foot and ankle. 
(3) Limited Bone Densitometry X-ray Machine Operator Certification, including bone densitometry radiographic procedures. 

WILLIAM D. HACKER, MD FAAP, CPE, Commissioner MIKE BUFINSIDE, Undersecretary MARK D. BIRDFUSTELL, Secretary APPROVED BY AGENCY: November 14, 2006

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VOLUME 33, NUMBER 6 – DECEMBER 1, 2006

FILED WITH LRC: November 15, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 on or before November 14, 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 January 2, 2007. Send written notification of intent to attend the public hearing or written comments 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: Dewey F. Crawford 564-3700 extension 3695

1. Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes uniform requirements for the certification of individuals operating sources of radiation in the healing arts holding a limited certificate.
(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.880, and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish practice standards relating to X-ray operators in a limited capacity.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating operators of sources is KRS 194A.050, 211.090, KRS 211.870, 211.890, and 211.993 stating that the Cabinet for Health Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.
(d) How this administrative regulation currently assesses or will assist in the effective administration of the statutes: It has been over ten years since the regulations in this chapter have been updated. Many advancements have taken place during that time in the radiation producing industry. This new regulation recognizes the need for standards for certification of X-ray operators operating in a limited capacity. This need has arisen due to the development of the industry and will allow the cabinet to ensure the highest quality image and treatment resulting from controlled, intentional exposure of radiation. This administrative regulation also brings the cabinet regulations into compliance with national 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 new regulation will change the existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).
(d) How the amendment will assist in the effective administration of the statutes: See (1)(c).
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities affected by this regulation are approximately 260 health care organizations with approximately 400 individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the new administrative regulation or amendment: Regulated entities must be familiar with new requirements in order to be licensed to operate X-ray equipment in a limited capacity.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of becoming familiar with this regulation should be negligible. The specific cost associated with this new regulation will be the time spent reading the requirements. Most operators have already received the training outlined in this regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have the information they need to be in compliance with the limited X-ray operator regulation governing the radiation producing industry. Additionally, they will have the benefit of working in an industry regulated to ensure highest degrees of safety to them and to the patients they serve.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost will be required to implement this regulation.
(b) On a continuing basis: No additional cost will be incurred on a continuing basis to implement this regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Radiation Operator Certification Fees collected in accordance with KRS 902 KAR 105:020.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:
(a) New, or by the change if it is an amendment: This administrative regulation will not require an increase in fees in order to implement it.
(b) 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, directly or indirectly.

TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any parts having to do with the radiation producing industry. This new regulation was not intended to do with radiation producing equipment is used, e.g., county or county owned hospitals or clinics.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 211.870, 211.890, and 211.993.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This new regulation will not generate revenue for the state or local government.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new regulation will not generate revenue for the state or local government in subsequent years.
(c) How much will it cost to administer this program for the first year? No additional costs.
d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations

(\emph{New Administrative Regulation})

907 KAR 3:182. In-state Inpatient Hospital Special Reimbursement.


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 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, as mandated by 2006 Ky Acts ch. 252, Part I, H.3.b.23, establishes special reimbursement for an in-state inpatient acute care hospital, a freestanding rehabilitation hospital, a freestanding psychiatric hospital, a long-term acute care hospital, and a state-designated rehabilitation teaching hospital that is not state owned or operated.

Section 1. Definitions. (1) \emph{Acute care hospital} is defined by KRS 205.639(1).

(2) \emph{Department} means the Department for Medicaid Services or its designated agent.

(3) \emph{Diagnosis-related group}\ or \emph{DRG} means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(4) \emph{Relative weight} means the factor assigned to each Medicare or Medicaid DRG classification that represents the average resources requirement for a Medicare or Medicaid DRG classification relative to the average resources required for all relevant discharges in the nation or state.

(5) \emph{State-designated rehabilitation teaching hospital that is not state-owned or operated} means a hospital not state-owned or operated which:

(a) Provides at least three thousand days of rehabilitation care to Medicaid eligible recipients in a fiscal year;

(b) Provides at least seventy-five percent of the statewide total of inpatient care to Medicaid eligible recipients; and

(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in an order to function independently outside of an institution posts discharge.

Section 2. In-state Inpatient Hospital Reimbursement. Pursuant to 2006 Ky Acts ch. 252, Part I, H.3.b.23 the department shall:

(1) Reimburse a lump sum payment to an in-state inpatient acute care hospital based on the hospital's Medicaid recipient DRG volume already adjudicated for claims with admission dates of July 1, 2005 through June 30, 2006.

(2)(a) Increase each DRG relative weight by seventeen percent subject to the availability of funds.

(b) The DRG relative weight increase established in paragraph \(a)\) of this subsection shall be a continuation of the relative weight increase which expired at close of business June 30, 2006 established in 907 KAR 3:180E submitted to the Legislative Research Commission on May 4, 2006 and shall not be an additional increase.

(3) Reimburse two (2) lump sum payments to an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, or an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated.

(a) One (1) lump sum payment referenced in subsection (3) of this Section shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2005 through June 30, 2006.

(b) One (1) lump sum payment referenced in subsection (3) of this Section shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2006 through June 30, 2007.

(4) Reimburse two (2) lump sum payments to an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated.

(a) One (1) lump sum payment referenced in subsection (4) of this Section shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2005 through June 30, 2006.

(b) One (1) lump sum payment referenced in subsection (4) of this Section shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2006 through June 30, 2007.

GLENN JENNINGS, Commissioner
MIKE BURNSIDE, Under Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: October 26, 2006
FILED WITH LRC: October 31, 2006 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. 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. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2007. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes, in accordance with 2006 Ky. Acts ch. 252, Part I, H.3.b.23, special reimbursement for an in-state inpatient acute care hospital, an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated. The special reimbursement encompasses an increase to diagnosis-related group (DRG) relative weights as well as lump sum payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part I, H.3.b.23.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 2006 Ky. Acts ch. 252, Part I, H.3.b.23 by establishing inpatient hospital lump sum payments, including lump sum payments to an in-state inpatient acute care hospital, an in-state
freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated. Additionally, it establishes an increase in DRG relative weights.

(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 2006 Ky. Acts ch. 252, Part I, H.3.b.23 by establishing inpatient hospital lump sum payments, including lump sum payments to an in-state inpatient acute care hospital, an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated. Additionally, it establishes an increase in DRG relative weights.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 65 acute-care hospitals, approximately 10 freestanding psychiatric hospitals, 5 freestanding rehabilitation hospitals, and 5 long-term acute-care hospitals, and 1 state-designated rehabilitation teaching hospital that is not state-owned or operated will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, as a result of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups identified in the response to question (3) will receive additional reimbursement, pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23, 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) anticipates the administrative regulation will cost approximately $34.0 million ($23.8 million federal funds; $10.2 million state funds) for State Fiscal Year (SFY) 2006.

(b) On a continuing basis: DMS anticipates the administrative regulation will cost approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing effect beyond SFY 2007 is anticipated.

(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 as well as Medical Assistance Revolving Trust Funds in accordance with 2005 Ky Acts ch. 173 and HB 380 2006 GA will be used to fund 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: Federal funds authorized under the Social Security Act, Title XIX as well as Medical Assistance Revolving Trust Funds in accordance with 2005 Ky. Acts ch. 252, Part I, H.3.b.23 will be used to fund this administrative regulation.

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

(9) Tiering: Is tiering applied? This administrative regulation establishes, in accordance with 2006 Ky. Acts ch. 252, Part I, H.3.b.23, a special reimbursement increase for an in-state inpatient acute care hospital, an in-state freestanding psychiatric hospital, an in-state freestanding rehabilitation hospital, an in-state long-term acute care hospital, and an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated. The reimbursement increase encompasses an increase to DRG relative weights as well as lump sum payments. Out-of-state inpatient hospitals are not included in the legislative mandates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect Medicaid recipients in need of inpatient hospital services and providers.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. Additionally, this administrative regulation and amended after comments regulation comply with 2005 Ky. Acts ch. 252, Part I, H.3.b.23 by increasing inpatient hospital service reimbursement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The DMS anticipates the administrative regulation will cost DMS approximately $34.0 million ($23.8 million federal funds; $10.2 million state funds) for State Fiscal Year (SFY) 2006.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates the administrative regulation will cost DMS approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing effect beyond SFY 2007 is anticipated.

(c) How much will it cost to administer this program for the first year? DMS anticipates the administrative regulation will cost DMS approximately $34.0 million ($23.8 million federal funds; $10.2 million state funds) for SFY 2006.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the administrative regulation will cost DMS approximately $3.0 million ($2.1 million federal funds; $0.9 million state funds) for SFY 2007; however, no continuing effect beyond SFY 2007 is anticipated.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Mental Retardation
(Repealer)

908 KAR 2:081. Repeal of 908 KAR 2:080.

RELATES TO: KRS 210.770 - 210.795
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.795

NECESSITY, FUNCTION, AND CONFORMANCE: The Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, has responsibility to administer the supported living services. KRS 194A.050 authorizes the cabinet, by administrative regulation, to operate the program and fulfill the responsibilities vested in the cabinet. This administrative regulation repeals 908 KAR 2:080, which is no longer needed because any necessary revisions to this program were filed as an amendment to 908 KAR 2:190.

Section 1. 908 KAR 2:080. Quality assurance standards for supported living services is hereby repealed.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
JOHN M. BURT, Ed D, Commissioner
APPROVED BY AGENCY: October 9, 2006
FILED WITH LRC: October 17, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2006, 5 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 regarding this proposed administrative regulation until close of business January 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jil Brown, Office of Legal Services, 275 East Main Street 5 W-8, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Vondah Vanderhorst

(1) Provide a brief summary of:
(a) What this administrative regulation does. This administrative regulation will repeal 908 KAR 2 080.

(b) The necessity of this administrative regulation: It is necessary to repeal 908 KAR 2 080 which was created in 1993 to provide guidelines for the Supported Living Program. In 1998, 908 KAR 2 190 was established to define more comprehensively the Supported Living Program and Services; therefore, 908 KAR 2 080 has become redundant and obsolete.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It is necessary to repeal 908 KAR 2 080 because it does not conform to authorizing statutes. Rather, 908 KAR 2 190 conforms with the authorizing statutes KRS 210:700 through 210:795.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal an unnecessary regulation. An amendment to 908 KAR 2 190 will incorporate language related to the authorizing statutes and required for the effective administration of the statutes and operation of the program.

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

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Service providers that shall include the 14 Community Mental Health Centers; and the Department for Mental Health and Mental Retardation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.770 - 210.795

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. None. Funds are allocated specifically for this program as part of the budget for the Department for Mental Health and Mental Retardation Services.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This administrative regulation is repealing 906KAR 2:090.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None. This administrative regulation is repealing 906KAR 2:090.

(c) How much will it cost to administer this program for the first year? There are no administrative fees for this program.

(d) How much will it cost to administer this program for subsequent years? There are no administrative fees for this program.

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

Revenues (+/-): 

Expenditures (+/-): 

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(New Administrative Regulation)

921 KAR 3:090. Simplified Assistance for the Elderly Program or "SAFE":


STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 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 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 delegates the administration of the Food Stamp Program to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to the Food Stamp Program for elderly and disabled individuals.

Section 1. Definitions

(1) "Regular Food Stamp Program benefits" means food stamp benefits received in accordance with the procedures specified in: (a) 921 KAR 5:020, Financial Requirements; (b) 921 KAR 5:035, Technical Requirements; (c) 921 KAR 3:030, Application Process; and (d) 921 KAR 3:035 Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional food stamp program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a food stamp program requirement is specified in this administrative regulation, all food stamp program requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

(1) A fair hearing;

(2) An administrative disqualification hearing;

(3) An appeal;

(4) A disqualification;

(5) A claim and collection of a claim; and

(6) Electronic Benefit Transfer, or "EBT", issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual

(a) is a Kentucky resident;

(b) is:

1. A current SSI recipient; or

2. SSI eligible, but SSI benefits are currently in suspense;

(c) is age sixty (60) or older;

(d) is not institutionalized;

(e) is:

1. Single, widowed, divorced, or separated; or

2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection, and

(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:030.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

(a) Shall not be eligible for SAFE; and

(b) May apply for regular Food Stamp Program benefits in accordance with 921 KAR 3:030.

(4) Meeting the criteria of subsection (1) of this section shall not prohibit an Individual from applying for regular Food Stamp Program benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular Food Stamp Program benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household a SF-1, "Simplified Assistance for the Elderly (SAFE) Application", and a return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

(a) Signed; and

(b) Received at the DCBS central office, Nutrition Assistance and Accountability Branch, 35-E, 275 East Main Street, Frankfort, Kentucky 40621.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the Information provided by the applicant on the SF-1 or the SF-2, "Simplified Assistance for the Elderly (SAFE) Recertification Form".

(3) The cabinet shall certify an eligible household for SAFE benefits for up to sixty (60) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification process.
Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service. (2) The standard SAFE benefit amounts shall be based on: (a) Shelter costs; (b) Household size; and (c) The average benefits received by a similar household in the regular Food Stamp Program.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period. (2) The cabinet shall process changes in household circumstances based on information received from SDX. (3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet may not act upon the information. (4) Unless a change in household circumstances results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 3/07; and (b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 3/07. (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. 502 KAR 3.090

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWISTELL, Secretary
APPROVED BY AGENCY: November 14, 2006
FILED WITH LFC: November 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 December 14, 2006, five (5) working days prior to the hearing, of their intent to attend. Absent due notice 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 January 2, 2007. 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 SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator (1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly program, or "SAFE", a food stamp demonstration project. (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform procedures for the implementation of SAFE. (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to 7 C.F.R. 271.4 by establishing requirements for the SAFE program, which is an optional project 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 assists in the effective administration of 7 C.F.R. 271.4 by establishing a demonstration project which will improve access to Food Stamp Program benefits. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: As this is a new administrative regulation, this does not apply. (b) The necessity of the amendment to this administrative regulation: As this is a new administrative regulation, this does not apply. (c) How the amendment conforms to the content of the authorizing statutes: As this is a new administrative regulation, this does not apply. (d) How the amendment will assist in the effective administration of the statutes: As this is a new administrative regulation, this does not apply. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 40,000 SSI participants age 60 or older could be affected by this administrative regulation. Of these 40,000, approximately 20,000 Kentucky residents are currently participating in the Food Stamp Program. The administrative regulation has no impact on state and local governments, businesses, or other organizations. (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The cabinet will identify potential SAFE applicants and mail those individuals a SAFE application. In order to receive SAFE benefits, an SSI recipient will have to return a SAFE application. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not involve a cost for Food Stamp Program applicants or participants. (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If an SSI recipient chooses to apply for the SAFE program established by this administrative regulation, the individual would receive food stamp assistance from the SAFE program. The SAFE program will provide a larger monthly amount of food stamp benefits to most SSI recipients than they would receive under the regular Food Stamp Program. (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: No additional funding required. (b) On a continuing basis: No additional funding required. (6) 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 is not used in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. The requirements established in this 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. 271.4
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 requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Family Support, will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 273.1, 273.2, 273.3, 273.10, 273.12, 273.14
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Food Stamp Program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenues in the first year.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Food Stamp Program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenues in subsequent years.
   (c) How much will it cost to administer this program for the first year? The Food Stamp Program has been operational for numerous years. This administrative regulation will not require any additional costs in the first year.
   (d) How much will it cost to administer this program for subsequent years? The Food Stamp Program has been operational for numerous years. This administrative regulation will not require any additional costs in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 14, 2006, at 10:00 a.m., in Room 125 of the Capitol Annex. Representative Tanya Pullin called the meeting to order, and the roll call was taken. The minutes of the October 10, 2006 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Richard "Dick" Roeding, Co-Chair; Senators Alice Kerr, Joey Pendleton, and Gary Tapp; Representatives James Bruce, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Kara Daniel, Mark Matics, Laura Millam, Emily Harkenrider, Roslyn Hendrickson, and Ellen Steinberg.

Guests: David T. Buckingham, William O. Thom, University of Kentucky; Alicia Sneed, Cindy Owen, Education Professional Standards Board; David Worley, Kentucky Department of Veterans Affairs; Richard Dobson, Gary Morris, Bethany Atkins Rice, Angela Robinson, Finance and Administration Cabinet; James Grawe, Natalie Tinsley, Board of Occupational Therapy; Jim Lane, Morgan Sprague, Department of Fish and Wildife; Amy Barker, Karen Howard, Bamey Kimman, Justice and Public Safety Cabinet; Chuck Stinbin, David Stumbo, Kembra Taylor, Department of Labor; Laura Moore, Virginia Davis, Environmental and Public Protection Cabinet; Susan Bush, Mike Haines, Department of Natural Resources; Carla Banahan, Elizabeth Caywood, David Gayle, Shane O'Donley, Stuart Owen, Cabinet for Health and Family Services; Gail Robinson, Department of Public Advocacy; Heidi Schissler, Protection and Advocacy.

The Administrative Regulation Review Subcommittee met on Tuesday, November 14, 2006 and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

UNIVERSITY OF KENTUCKY: Agriculture Experiment Station: Division of Regulatory Services: Seed
12 KAR 1:114. Repeal of 12 KAR 1:115. William O. Thom and David Buckingham represented the university.

EDUCATION PROFESSIONAL STANDARDS BOARD: Internship
16 KAR 7:020. Kentucky Principal Internship Program. Alicia Sneed and Cindy Owen represented the board. In response to questions by Co-chair Roeding and Senator Tapp, Ms. Sneed stated that the administrative regulation implements the Internship program required by law. She stated that the principal mentor was a practicing principal who assisted the principal intern and served on the principal internship committee. The mentor received a $1400 stipend which is the same amount received by a teacher mentor.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5, 6, 8, 9, 12, 13, 14, 15, and 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GOVERNOR'S OFFICE: Kentucky Department of Veterans Affairs: Certification
17 KAR 4:010. Veteran's Services Organization Burial Honor Guard Program. David Worley, cemetery branch manager, represented the department. In response to a question by Co-chair Roeding, Mr. Worley stated that the $85,000 budget was spent on stipends to provide burial honors. The amounts of the stipends varied with the honors provided.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1, 2, and 3 and the form incorporated by reference to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to create a new section to clearly establish the requirements for receiving a stipend (in the body of the administrative regulation, instead of on the application form). Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Income Tax; Corporations
103 KAR 16:290. Apportionment; property factor. Gary Morns, executive director; Bethany Rice; and Richard Dobson, executive director, represented the department. In response to a question by Co-chair Pullin, Mr. Morris stated that these administrative regulations incorporated the information and guidance previously published in circulars. In response to questions by Representative Bruce, Mr. Dobson stated they had received complaints from wholesalers about the quality of the cigarette stamps. He stated they were in discussions with industry representatives about the problem.

A motion was made and seconded to approve the following amendments: amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:390. Attachment for Corporate Officer Information - Form 720, Form 7120S and Form 765, Schedule Q.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax: Individual
103 KAR 17:120. Estimated tax penalty.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 3, and 4 to: (a) comply with the drafting and format requirements of KRS Chapter 13A; and (b) delete provisos that summarized or repeated statutory provisions, as required by KRS 13A.120. Without objection, and with agreement of the agency, the amendments were approved.

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103 KAR 17:130. Individual Income Tax - Military Personnel - Nonresidents

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 4, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax Withholding

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 18 220. Kentucky Economic Opportunity Zone Job Development Assessment Fee.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retail Transactions
103 KAR 28.150 & E. Collection of sales tax on certain motor vehicle sales.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Licensure for Occupational Therapy: Board
201 KAR 28:090. Renewals. James Groves, assistant attorney general; and Natalie Tinsley, Chairman of the Board of Occupational Therapy, represented the board.

201 KAR 28:220. Per diem of board members.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2.015. Feeding of wildlife. Jim Lane, division director; and Morgan Sprague, counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Sections 1-2 to comply with the formatting and drafting requirements of KRS Chapter 13A; (4) to amend Section 1 to add areas occupied by captive cervids and wildlife being rehabilitated to the definitions of curtilage of the home; and (5) to amend Section 2 to allow the feeding of wildlife in a zoo or other facility that keeps or exhibits wildlife. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2.225 & E. Dove, wood duck, teal, and other migratory game bird hunting

301 KAR 2.226 & E. Youth waterfowl, moorhen and gallinule hunting seasons. In response to a question by Co-chair Pullin, Mr. Lane stated that a gallinule is a waterfowl similar to a duck.

Hunting and Fishing
301 KAR 3.010. Public use of Wildlife Management Areas. In response to questions by Senator Tapp, Mr. Lane said that this administrative regulation prohibits horseback riding during firearm season in wildlife management areas in order to minimize disturbances for hunters and maintain the safety of horseback riders. He stated that no public comments were received.

301 KAR 3.100. Special commission permits.

A motion was made and seconded to approve the following amendments: to amend Section 2 to correct two minor drafting errors Without objection, and with agreement of the agency, the amendments were approved.

Water Patrol
301 KAR 6.020. Boating safety equipment. In response to questions by Senator Roeding and Co-chair Pullin, Ms. Sprague stated that the amendment to this administrative regulation will bring Kentucky's requirements regarding boat lights into compliance with federal regulations and will allow boaters to use the same equipment in Kentucky as in other states. In response to
questions from Co-chair Pullin, Ms. Sprague stated there was not a grace period in the regulation but that department would implement one through its policies in order to allow boaters time to make the required changes to their boats.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.222; and (3) to amend Sections 1-6 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:422. Rollover protective structures; overhead protective systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend the STATUTORY AUTHORITY paragraph to correct a typographical error; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.222; and (4) to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:425 & E. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:500 & E. Maritime employment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Alcoholic Beverage Control: Licensing

804 KAR 4:170. Through transporter's. Laura Moore and Virginia Davis represented the office. In response to questions by Co-chair Pullin, Ms. Moore stated that four of those administrative regulations were directly related to Senate Bill 82 passed during the 2006 session and that all of the application forms were moved into a single regulation. She stated that no public comments were received.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify the subject matter of the administrative regulation; (2) to amend Section 1 to clarify that a license shall be issued after approval; and (3) 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.

804 KAR 4:220. Extended hours supplemental licenses.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 7 to correct statutory citations, (2) to amend Section 10 to include the full title of the document incorporated by reference; and (3) to amend Sections 2, 4, 5, 6, 8, 9, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4 240. Registration of brands.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

804 KAR 4:250. Special temporary licenses.

A motion was made and seconded to approve the following amendments: Amends the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
804 KAR 4 330. Procedures for violations of KRS 244.165.

804 KAR 4 340. Brew-on-premises license. A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 6, and 8 to clarify that a brew-on-premises establishment must be licensed; and (2) to amend Sections 3, 6, 7, 9, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:350. Out-of-state brewer license. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a statutory citation; (2) to amend Section 1 to include the correct title of the document incorporated by reference and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:390. Small farm winery license application and operations. A motion was made and seconded to approve the following amendments. (1) to amend the TITLE to clarify the subject matter of this administrative regulation; (2) to amend the STATUTORY AUTHORITY to delete a citation; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function of this administrative regulation; (4) to amend Section 1 to include the correct title of the document incorporated by reference; and (5) to delete Section 3 to comply with the drafting requirements of Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:385. Using the word "Kentucky" on wine labels prohibited - exceptions. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation; (2) to amend Section 1 to delete an incorrect statutory citation and clarify how a product integrity investigation is conducted; and (3) to amend Section 3 to insert a citation to a federal regulation. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:400. ABC basic application form incorporated by reference. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the license titles; (2) to amend Section 3 to correct the website address; and (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:410. ABC schedules forms incorporated by reference. A motion was made and seconded to approve the following amendments. (1) to amend the TITLE to clarify the subject matter of this administrative regulation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function served by this administrative regulation; (3) to amend Section 2 to correct the website address; and (4) to amend Sections 1 and 2 to correct the titles of the documents incorporated by reference and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:420. Small farm winery wholesaler license application forms. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO section to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Natural Resources: Office of Mine Safety and Licensing: Sanctions and Penalties
805 KAR 8:050 & E. Criteria for the imposition and enforcement of sanctions against licensed premises. Susan Bush and Mike Haines represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend Section 1(7) to clarify the definition of "subsequent offense"; (3) to amend Sections 2 and 4 to clarify that penalties will be assessed in proportion to the seriousness of the violations and the facts of each case; (4) to amend Section 2 to clarify that civil monetary penalties will be assessed in accordance with the factors established in KRS 351.194(7); and (5) to amend Sections 1 through 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.

Department of Natural Resources: Office of Mine Safety and Licensing: Kentucky Mine Safety Review
825 KAR 1.020 & E. Administrative hearings procedures. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend Section 2(2) to state that the requirement that certain parties be represented by an attorney is in accordance with S.C.R. 3.020; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8, 11, 19, 20, and 26 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Division of Certificate of Need: Certificate of Need
903 KAR 6.030 & E. Certificate of need expenditure minimums. Shane O'Donley represented the cabinet. In response to questions by Representative Bruce and Co-chair Roeding, Mr. O'Donley stated the amendment to this regulation would increase the capital expenditure minimum by the federal price index to allow more projects without first obtaining a certificate of need.

A motion was made and seconded to approve an amendment to correct the name of the federal agency referred to in the regulation. Without objection, and with agreement of the agency, the amendment was approved.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation. Without objection, and with agreement of the agency, the amendment was approved.

Department for Medicaid Services: Division of Administration and Financial Management: Medicaid Services
907 KAR 1.011 & E. Technical eligibility requirements. Carrie Banahan and Stuart Owen represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 3, 5, 6, 8, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 5 to specify that an individual who previously received Medicare or SSI is also exempt from providing further documentation of US citizenship or nationality. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:012 & E. Inpatient hospital services. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:014 & E. Outpatient hospital services. In response to questions by Co-chair Pullin, Ms. Banahan
stated that, in accordance with the amendment, prior authorization was not required for treatment of a patient in an observation bed for one day.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend Section 2(2)(b) to specify that services provided to a recipient in an observation bed shall not be subject to prior authorization; and (3) to amend Section 4 to: (a) delete therapy limits for recipients of Family Choices benefits; and (b) establish the procedure for requesting an override of the established limits. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:026 & E. Dental Services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, 8, 9, 10, 13, 15, and 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 2 to delete the limit of one complete hearing or hearing aid evaluation per year. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:350 & E. Coverage and payments for organ transplants.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 1 to establish the criteria for determining if a hospital is in good standing. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, 5, 6, 7, 8, and 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 7(1) to require prior authorization for a loaner item for a member-owned piece of equipment that is being repaired. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:604 & E. Recipient cost-sharing.

In response to questions from Co-Chair Pullin, Ms. Banahan stated recipients whose income is below 100 percent of the federal poverty level would receive services regardless of their ability to pay a co-pay. She stated that the Medicaid Management Information System and the pharmacy benefit administrator were used to track co-pays until they hit the maximum out-of-pocket limit. Regarding coverage limits, she stated that a recipient was able to utilize the entire amount available to access services and then pay any additional costs individually.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 7, and 10 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Sections 2, 3, 4, and 5 to clarify the coverage categories listed in the tables; and (4) to amend Section 6 to specify that there is no cost-sharing for services furnished to individuals who have reached their 18th birthday but have not turned 19. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:626 & E. Reimbursement of dental services.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:900 & E. KYHealth Choices Benefit Packages.

In response to questions by Co-chair Roeding, Ms. Banahan stated that letters to recipients were mailed in May explaining the benefit package in which they would be included. She said the cabinet intended to send another recipient letter as well as a provider letter in January explaining the changes that were made.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Payment and Services

907 KAR 3:005 & E. Physician’s services.

In response to questions by Co-chair Pullin, Ms. Banahan stated all physicians were treated the same regarding co-pays with the exception of ophthalmologists. She stated that for all other physicians, the co-pay was additive and was not deducted from the doctor’s claim if it was not received. For ophthalmologists, it was deducted because a $2 co-pay was charged for vision services for many years.

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 Section 1, 2, 3, 4, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 6 to: (a) delete therapy limits for recipients of Family Choices benefits; and (b) establish the procedure for requesting an override of the established limits. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 3:125 & E. Chiropractic services and reimbursement.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 3:130 & E. Medical Necessity and clinically appropriate determination basis.

In response to questions by Co-chair Pullin, Ms. Banahan stated that for procedures that are not on Intergal, the cabinet used Medicare criteria or had physicians develop criteria to determine medical necessity and clinical appropriateness.

Heidi Schissler, legal director of the Department of Protection and Advocacy, appeared in opposition to this administrative regulation. Ms. Schissler stated that the proposed regulation created a problem under the Due Process Clause of the U.S. Constitution because recipients would not be able to access the reason for a denial of service without purchasing the Intergal criteria from McKesson Health Solutions for several thousand dollars.

After discussion, Ms. Banahan suggested an additional amendment of this administrative regulation that would require the letter of denial to include the specific clinical reason for the denial.
Department for Community Based Services
Division of Child Support
Child Support
922 KAR 2:170 & E. STARS for KIDS NOW Program for Type I licensed child care centers

In response to questions by Co-chair Roeding and Representative Bruce, Ms. Caywood stated that this administrative regulation changed the frequency and review criteria to match the recommendations of the National Association for the Education of Young Children. She stated that the program was voluntary and cost neutral.

A motion was made and seconded to approve the following amendments: 1) to amend the RELATES TO paragraph to insert a statutory citation; 2) to amend Section 2(5) to clarify that any center applying for or participating in the STARS program shall not have certain actions against the center’s license and shall pay all civil penalties in certain circumstances; 3) to amend Sections 3 through 6 to correctly reference requirements found in other sections of the administrative regulations; 4) to rewrite Section 7 to correctly state the requirements for achievement awards and quality incentive awards; and 5) to amend Sections 1 through 7, 10, 12, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Day Care
922 KAR 2:210 & E. STARS for KIDS NOW Program for Type II licensed child care centers

A motion was made and seconded to approve the following amendments: 1) to amend the RELATES TO paragraph to insert a statutory citation; 2) to amend Section 1 to insert a definition for “certified family child care home”; 3) to amend Sections 4 through 6 to correctly reference requirements found in other sections of the administrative regulations; 4) to rewrite Section 7 to correctly state the requirements for achievement awards and quality incentive awards; and 5) to amend the TITLE and Sections 1 through 7, 10, 12, and 13 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Water: Water Resources
401 KAR 4.060. Stream construction criteria.

Department of Labor: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

The department requested deferral of this administrative regulation until the next meeting. Without objection, and with agreement of the subcommittee, this administrative regulation was deferred.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Kentucky Horse Racing Authority: Thoroughbred Racing
810 KAR 1:080. International wagering hubs.

Harness Racing
811 KAR 1:005. Definitions.
811 KAR 1:010. Associations.
811 KAR 1:015. Race officials.
811 KAR 1:020. Registration and identification of horses
811 KAR 1:025. Farm or stable name.
811 KAR 1:030. Eligibility and classification.
811 KAR 1:035. Claiming races.
811 KAR 1:040. Stakes and futures.
811 KAR 1:045. Entries.
811 KAR 1:050. Entries and starters; split races.
811 KAR 1:055. Declaration to start; drawing horses.
811 KAR 1:060. Postponement; rescheduling, purses.
811 KAR 1:065. Starting.
811 KAR 1:075. Racing and track rules.
811 KAR 1:080. Placing; money distribution.
811 KAR 1:085. Conduct of racing.
811 KAR 1:090. Medication; testing procedures; prohibited practices.
811 KAR 1:095. Disciplinary Measures and Penalties.
811 KAR 1:100. Protests.
811 KAR 1:105. Review and appeal.
811 KAR 1:110. Timing and records.
811 KAR 1:130. Security; persons permitted on licensed premises.
811 KAR 1:135. Identification cards and badges.
811 KAR 1:140. Post time; entry number.
811 KAR 1:145. Number of races per program.
811 KAR 1:150. Postponements; decision on.
811 KAR 1:160. Association with undesirable prohibited.
811 KAR 1:175. Tack inspection.
811 KAR 1:195. Track deductions from wages.
811 KAR 1:220. Harness racing at county fairs.
811 KAR 1:225. Substance abuse by Authority employees and licensees.

The subcommittee adjourned at 11:35 a.m. until December 12, 2006 at 10 a.m.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of November 8, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of November 8, 2006, having been referred to the Committee on November 1, 2006, pursuant to KRS 13A.290(6):

600 KAR 6.030
600 KAR 6.040
600 KAR 6.050
600 KAR 6.060
600 KAR 6.065
600 KAR 6.070
600 KAR 6.080

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 9, 2006 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 15, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of November 15, 2006, having been referred to the Committee on November 1, 2006, pursuant to KRS 13A.290(6):

201 KAR 8.150
201 KAR 8.260
201 KAR 9.041
201 KAR 20.070
201 KAR 20.110
201 KAR 20.161
201 KAR 20.310
201 KAR 20.411
201 KAR 20.450
201 KAR 20.470
201 KAR 20.500
201 KAR 22.040
201 KAR 22.140
201 KAR 33.030
821 KAR 3.042

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 15, 2006 meeting, which are hereby incorporated by reference.
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.
# LOCATOR INDEX - EFFECTIVE DATES

## VOLUME 32

The administrative regulations listed under VOLUME 32 are those administrative regulations that were originally published in Volume 32 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2006 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations filed on or after 6/20/05 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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### LOCATOR INDEX - EFFECTIVE DATES

**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note: Emergency regulations filed on or after 6/20/05 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(f) Repealer regulation; KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.
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