ARRS – APRIL 10, 2007 TENTATIVE AGENDA
REGULATION REVIEW PROCEDURE

EMERGENCIES:
Cabinet for Health and Family Services

AS AMENDED:
Department of Revenue
Department of Fish and Wildlife Resources
Department of Agriculture
Office of Vocational Rehabilitation
Office for the Blind
Department for Workforce Investment
Office of Insurance
Kentucky Horse Racing Authority
Cabinet for Health and Family Services

AMENDED AFTER COMMENTS:
Department for Environmental Protection
Board of Tax Appeals
Cabinet for Health and Family Services

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 15, 2007:
Kentucky Higher Education Assistance Authority
State Board of Elections
Board of Veterinary Examiners
Board of Licensed Professional Counselors
Department of Fish and Wildlife Resources
Department of Education
Office of Housing, Buildings and Construction
Cabinet for Health and Family Services

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 2007:
Kentucky Higher Education Assistance Authority
Board of Pharmacy
Department for Environmental Protection
Office of Housing, Buildings and Construction

MARCH 13, 2007 MINUTES OF THE ARRS
OTHER COMMITTEE REPORTS

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Subject Index

MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet April 10, 2007 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 3137-3141 of this Administrative Register.
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106 KAR 5.010 Application and renewal requirements for Response Team membership.
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106 KAR 5.030. KCCRT member disciplinary actions.
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Division of Water

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401 KAR 8.070. Public notification. (Amended After Comments) (Deferred from March)
401 KAR 8.075. Consumer confidence reports. (Amended After Comments) (Deferred from March)
401 KAR 8.150. Disinfection, filtration, and recycling. (Deferred from January) (Deferred from March)
401 KAR 8.160. Enhanced filtration and disinfection for large systems serving at least 10,000 people. (Amended After Comments) (Deferred from March)
401 KAR 8.162. Enhanced filtration and disinfection for small systems serving less than 10,000 people. (Deferred from January) (Deferred from March)
401 KAR 8.250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels. (Amended After Comments) (Deferred from March)
401 KAR 8.501. Repeal of 401 KAR 8.500. (Deferred from January) (Deferred from March)
401 KAR 8.510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors. (Amended After Comments) (Deferred from March)
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401 KAR 31:030. Characteristics of hazardous waste. (Hearing/Written Comments)
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401 KAR 32:020. Manifest system. (Hearing/Written Comments)
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401 KAR 34:060. Releases from solid waste management units. (Hearing/Written Comments)
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401 KAR 34:180. Use and management of containers. (Hearing/Written Comments)
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401 KAR 34:280. Air emission standards for equipment leaks. (Hearing/Written Comments)
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401 KAR 35:220. Land treatment (Interim Status). (Hearing/Written Comments)
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401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (Interim Status). (Hearing/Written Comments)
401 KAR 35:285. Drip pads (Interim Status). (Hearing/Written Comments)
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401 KAR 35:350. Hazardous waste facilities and storage (Interim Status). (Hearing/Written Comments)

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401 KAR 36:005. Definitions related to 401 KAR Chapter 36. (Hearing/Written Comments)
401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces. (Hearing/Written Comments)
401 KAR 36:025. Tables and procedures associated with the management of specific hazardous wastes and specific types of hazardous waste management facilities. (Hearing/Written Comments)
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401 KAR 37:020. Schedule for land disposal prohibition and establishment of treatment standards. (Hearing/Written Comments)
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401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Sting Board. (Hearing/Written Comments)

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Office of Administrative Hearings

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Kentucky Vehicle Enforcement

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Department of Corrections

Office of the Secretary
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TRANSPORTATION CABINET
Department of Highways

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EDUCATION CABINET
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Office of Chief State School Officer
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
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Tax Appeals
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Department of Labor

Occupational Safety and Health
803 KAR 2:308 & E. Personal protective equipment. (E expires 8/14/07)
803 KAR 2:320 & E. Toxic and hazardous substances. (E expires 8/14/07)
803 KAR 2:403 & E. Occupational health and environmental controls. (E expires 8/14/07)
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803 KAR 2:425 & E. Toxic and hazardous substances. (E expires 8/14/07)
803 KAR 2:500 & E. Maritime employment. (E expires 8/14/07)

Department for Natural Resources

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805 KAR 7:100. Requirements for belt examiner.

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805 KAR 11:001. Definitions for 805 KAR Chapter 11.
805 KAR 11:010. Requirements for application for certification of drug-free workplace.
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Kentucky Horse Racing Authority

Thoroughbred Racing
810 KAR 1.080. International wagering hubs. (Amended After Comments) (Deferred from June)

Harness Racing
811 KAR 1:035. Claiming races. (Deferred from October)
811 KAR 1:075. Racing and track rules. (Deferred from October)
811 KAR 1:085. Conduct of racing. (Deferred from October)
811 KAR 1:090. Medication; testing procedures; prohibited practices. (Amended After Comments) (Deferred from November)
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Radiation Operators Certification
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902 KAR 105:061. Repeal of 902 KAR 105.060. (Deferred from January)
902 KAR 105:070. Violations and endorsement. (Deferred from January)

Office of the Inspector General
906 KAR 1:150. Uniform evaluation and re-evaluation of a health care professional. (Written Comments Received)

Department for Medicaid Services
Medicaid Services
907 KAR 1:160 & E. Home and community based waiver services. (*E* expires 4/29/07) (Amended After Comments) (Deferred from February)

Payment and Services
907 KAR 3:183 & E. Instate inpatient hospital special reimbursement. (*E* expires 6/25/07) (Deferred from March)
Filing and Publication
Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

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

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

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

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

Review Procedure
After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
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EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, MARCH 15, 2007

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

STATEMENT OF EMERGENCY
907 KAR 1:025E

This emergency administrative regulation is being promulgated to assure compliance with federal rules related to intermediate care facility reimbursement by allowing the Cabinet to cost settle payments made to state-owned intermediate care facilities each year. This emergency administrative regulation also increases the rate paid to nursing facilities with Medicaid certified brain injury units to assure that these facilities are fairly compensated for services provided to residents with brain injuries. Failure to enact this administrative regulation on an emergency basis would prevent a loss of federal funding as this emergency regulation complies with federal rules related to intermediate care facility reimbursement. 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.

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

907 KAR 1:025E. Payment for services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

RELATES TO: KRS 142.363, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 142.363(3), 194A.030(2), 194A.050(1), 205 520(3)

EFFECTIVE: March 1, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's cost which may be allowed by the department in establishing the reimbursement rate.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for Individuals with mental retardation or a developmental disability (ICF-MR-DD); or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or

2. An institution for mental diseases.

(3) "Cost-based facility" means a facility which:

(a) The department shall reimburse for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;

2. An intermediate care facility for individuals with mental retardation or a developmental disability; or

3. An institution for mental diseases.


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

(6) "Global Insight Index [MRI1]" means an indication of changes in health care costs from year to year developed by Global Insight [Data Resource Incorporated].

(7) "IMD" means an institution for mental diseases, excluding psychiatric hospitals.

(8) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to a facility; and

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF.

(9) "Occupancy factor" means a percentage representing:

(a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

(10) "Prospective rate" means a payment rate for routine services based on allowable costs and other factors which, except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(11) "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(6)(i).

(12) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Long-term Care.

(13) "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-MR-DDs.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with mental retardation or a developmental disability or a nursing facility with an all-inclusive rate unit, a facility which desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, it shall be required to have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components or principles established in this section.

(1)(a) Prospective payment rates for routine services shall be set by the department on a facility-specific basis, and shall not be subject to retrospective adjustment except as specified in this section of this administrative regulation.

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:

   a. A governmentally imposed minimum wage increase, staffing rate increase, or a level of service increase; and

b. The increase was not included in the Global Insight Index
2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or
3. The facility experiences a governmentally-imposed displacement of residents.

(d1) The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c)(2) of this subsection of this paragraph shall not exceed the amount by which the cost increase resulting directly from the government action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

a. Salaries; and
b. Other.

2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(a) The state shall set a uniform rate year for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report which has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

(b) Partial year, or budget cost data shall be used if a full year's data is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating to costs:
1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:
   a. Not pay the facility twice for the same costs; and
   b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.
2. If the trending and indexing factors include costs related to a minimum wage increase:
   a. The department shall not make a separate rate adjustment; and
   b. The minimum wage costs shall not be deleted from the trending and indexing factors.
3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.
4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:
1. Represents interest on:
   a. Long term debt existing at the time the provider enters the program; or
   b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.
   i. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and
   ii. The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or
   2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances and various types of receivable financing.
(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.
4. The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it can be demonstrated that the related organization is equivalent to a second party supplier.
(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.
(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs.
(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:
1. A cost-based facility entered into a lease arrangement as an Intermediate care facility prior to April 22, 1976;
2. An Intermediate care facility for individuals with mental retardation or a developmental disability entered into a lease arrangement prior to February 23, 1977; or
3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(c) A cost shall be allowable and eligible for reimbursement if the cost is:
(a) Reflective of the provider's actual expenses of providing a service; and
(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(7) The following costs shall be allowable:
(a) Costs to related organizations pursuant to 42 C.F.R. 413.17.
(b) Costs of educational activities pursuant to 42 C.F.R. 413.85.
(c) Research costs pursuant to 42 C.F.R. 413.90;
(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;
(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98.
(f) Depreciation on buildings and equipment if a cost is:
1. Identifiable and recorded in the provider's accounting records;
2. Based on historical cost of the asset or, if donated, the fair market value; or
3. Prorated over the estimated useful life of the asset using the straight-line method;
(g) Interest on current and capital indebtedness; or
(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(b) The following shall not be allowable costs:
(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;
(b) Political contributions;
(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;
(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences or any related activities that are not related to NF training or educational purposes;
(e) Costs related to lobbying.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:
(a) Determined the actual gain on the sale of the facility; and
2. Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis;

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price;

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred; and

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

(10) Valuation of capital assets.
(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984, and before October 1, 1985.

(b) For bona fide changes of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395(v)(1)(D)(ii)(2).

(c) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and

2. Services performed by the facility; and

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; and

5. Program planning.

(12) The following shall apply to an annual cost report:

(a) A year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that if an expansion and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13)(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost;

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit;

(c) A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; and

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresenta-
(24) The department shall retrospectively cost settle state-owned or operated ICF-MR-DD reimbursement for non-capital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services. Retrospective settlement shall entail:

(a) Comparing interim payments with the property apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;

(b) A tentative cost report settlement based upon:
   1. Eighty (80) percent of any amount due the facility after a preliminary review is performed;
   2. One hundred (100) percent settlement of any liability due the department; and
   3. A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(25) The department, regarding state-owned or operated ICF-MR-DD reimbursement for noncapital routine services:
(a) Shall use projected data in order to approximate as closely as possible an interim rate expected to correspond to postsettlement cost; and

(b) May adjust interim rates up or down as necessary to approximate a rate corresponding as close as possible to anticipated postsettlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect the following:

(1) The adjusted allowable cost for the facility; and

(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for individuals with mental retardation or a developmental disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) Laboratory procedures or x-rays if ordered by a:
   1. Physician;
   2. An advanced registered nurse practitioner (ARNP) if the laboratory test or x-ray is within the scope of the ARNP's practice; or

3. Physician assistant if:
   a. Authorized by the supervising physician; and
   b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for individuals with mental retardation or a developmental disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services identified in 907 KAR 1:023; or

(b) Laboratory procedures or x-rays if ordered by a:
   1. Physician;
   2. An ARNP if the laboratory test or x-ray is within the scope of the ARNP's practice; or

3. Physician assistant if:
   a. Authorized by the supervising physician; and
   b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or

(c) Psychological or psychiatric therapy.

(3) Ancillary services. (a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement.

(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:

(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or

(b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1) A nursing facility recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate for services provided in the distinct part ventilator unit.

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) Base the census upon:
   1. The quarter preceding the beginning of the rate year; or
   2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year.

(3) The fixed rate for a hospital-based facility shall be $583.82 per day.

(b) The department shall reimburse a freestanding facility:
   1. A fixed rate of $317.29 per day; and

2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) of this section shall be increased or decreased based on the Data Resource Incorporated rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of distinct part ventilator nursing facility units shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

(a) Be Medicare and Medicaid certified;

(b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;

(c) Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation; and

(d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

(2) Except as provided in subsection (3) of this section, a nursing facility with a Medicaid certified brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at $475 ($366) per diem for services provided in the brain injury unit.

(3) A facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) negotiated rate which shall not exceed the facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance...
Section 9. Reimbursement for Required Services Under the Preadmission Screening and Resident Review (PASRR) for a Nursing Facility With a Ventilator Unit; a Nursing Facility With a Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility.

(1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a facility’s participation in the Medicaid Program.


(1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

(a) A nursing facility with a certified brain injury unit;

(b) A nursing facility with a distinct patient ventilator unit;

(c) A nursing facility designated as an institution for mental diseases;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with mental retardation or a developmental disability.

(2) A payment made to a facility governed by this administrative regulation:

(a) Be made in accordance with the requirements established in 907 KAR 1:022;

(b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities.

(1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of $550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if:

(a) Funding is available, and

(b) The facility:

1. Is located within the Commonwealth of Kentucky;

2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;

3. Only provides services to children under age twenty-one (21); and

4. Has forty (40) or more licensed beds.

(3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:

(a) Apply to services provided on or after July 1, 2002;

(b) Be made on a quarterly basis; and

(c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) “Cost-based Facility Reimbursement Cost Report Instructions”, April 2000 Edition; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: February 26, 2007
FILED WITH LRC: March 1, 2007 at 4 p.m.

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

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT.

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(d) How this administrative regulation assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the reference from “Data Resources Incorporated” to the “Global Insights Index”; removes the minimum occupancy factor for state-owned ICF-MR-DDs; allows the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increases the rate paid to nursing facilities with Medicaid certified brain injury units for (specialized rehabilitative services for persons with brain injuries) from a fixed rate of $360 to $475 per diem.

(b) The necessity of the amendment to the administrative regulation: This amendment is necessary to update obsolete language; assure compliance with federal rules related to ICF-MR-DD facility reimbursement by allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increase the rate paid to nursing facilities with Medicaid certified brain injury units to assure that the facilities are fairly compensated for services provided to residents with brain injuries.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year and increases the rate paid to nursing facilities with Medicaid certified brain injury units to assure that the facilities are fairly compensated for services provided to residents with brain injuries.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by updating obsolete language; removing the minimum occupancy factor for state-owned ICF-MR-DDs; allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increasing the rate paid to nursing facilities with Medicaid certified brain injury units (for specialized rehabilitative services for persons with brain injuries) from a fixed rate of $360 to $475 per diem.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: State-owned ICF-MR-DDs and nursing facilities with Medicaid certified brain injury units will 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: State-owned ICF-MR-DDDs will be subject to yearly cost settlements to assure compliance with federal rules related to reimbursement and nursing facilities with Medicaid certified brain injury units will receive an increased rate to help assure that the facilities are fairly compensated for services provided to residents with brain injuries.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Regulated entities will not be subject to any costs associated with implementation of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). State-owned ICF-MR-DDDs will be subject to yearly cost settlements and nursing facilities with Medicaid certified brain injury units will receive an increased rate for services provided to residents with brain injuries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that by cost setting payments made to state-owned ICF-

MR-DDDs each year, an increase in expenditures of approximately $13,823,881 ($9,618,656 federal/$4,205,225 state) is expected. DMS further anticipates that increasing the rate paid to nursing facilities with Medicaid certified brain injury units will result in an increase in expenditures of approximately $702,721 ($488,953 federal/$213,768 state). Total increased expenditures as a result of this amendment equal $14,526,602 ($10,107,610 federal/$4,418,992 state).

(b) On a continuing basis: DMS anticipates an increase of approximately $14,526,602 ($10,107,610 federal/$4,418,992 state) on a continuing basis.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) 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 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? State-owned ICF-MR-DDDs and Medicaid certified brain injury units will be impacted by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 447.272 and KRS 205.520.

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? State-owned ICF-MR-DDDs will see an increase in reimbursement after DMS cost settlements payment at the end of the year. Nursing facilities with Medicaid certified brain injury units will see an increase in reimbursement for preauthorized specialized rehabilitative services from a fixed rate of $360 to $475 per diem.

(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? State-owned ICF-MR-DDDs may see an increase in reimbursement after DMS cost settlements payment at the end of the year. Nursing facilities with Medicaid certified brain injury units will see an increase in reimbursement for preauthorized specialized rehabilitative services from a fixed rate of $360 to $475 per diem.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates by cost setting payments made to state-owned ICF-MR-DDDs each year, an increase in expenditures of approximately $13,823,881 ($9,618,656 federal/$4,205,225 state) is expected. DMS further anticipates that increasing the rate to nursing facilities with Medicaid certified brain injury units will result in an increase in expenditures of approximately $702,721 ($488,953 federal/$213,768 state). Total increased expenditures as a result of this amendment equals $14,526,602 ($10,107,610 federal/$4,418,992 state).

(d) How much will it cost to administer this program for subsequent years? DMS anticipates an increase of approximately $14,526,602 ($10,107,610 federal/$4,418,992 state) on a continuing basis.

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:
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Miscellaneous Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 2:020. Lien on "Qualified Real Estate".

RELATES TO: KRS 140.300(5), 140.320, 140.350 [443.130(4)]

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes requirements [143.130(4)] for determining the commencement date for the five (5) year lien that is required by KRS 140.350 when qualified real estate is reported at agricultural or horticultural value for inheritance tax purposes.

Section 1. Definition. "Qualified real estate" is defined by KRS 140.300(5).

Section 2. If qualified real estate is reported at its agricultural or horticultural value in lieu of the fair cash value, the commencement date for the five (5) year lien that is required by KRS 140.350 shall be the decedent's date of death.

Section 3. (1) This administrative regulation shall replace Revenue Policy 92P117.

(2) Revenue Policy 92P117 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 584-5523, fax (502) 584-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 2:030. Policies and circulars relating to inheritance tax.

RELATES TO: KRS [143.140, 143.140, 143.120, 131.130(1)]

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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. The Department of Revenue has many policies and circulars that predate the enactment of KRS Chapter 13A and conflict with, or are redundancies of, current tax laws. This administrative regulation formally rescinds [143.140, 143.120, 131.130(1)] the previously-issued policies and circulars relating to taxes administered by the Department's Office of Sales and Excise Taxes.

Section 1. These policies merely restate or summarize the requirements or provisions of the inheritance and estate tax statutes of KRS Chapter 140 as well as other pertinent parts of KRS Chapters 6, 21, 26, 131, 161, 164, 304, 362, 385, and 411. The following policies are hereby formally rescinded and shall be null, void, and unenforceable:

(1) [Policy]

(a) Revenue Policy 92P010 (6/3/83), relating to deferred payment of inheritance tax (KRS 131.183 and 140.222);

(b) Revenue Policy 92P015 (12/1/83), relating to deferred payment of inheritance tax when beneficiary dies (KRS 140.222, 140.224 and 395.195);

(c) Revenue Policy 92P020 (6/3/83), relating to the statutory limit for collection of inheritance tax (KRS 140.160 and 140.210);

(d) Revenue Policy 92P025 (9/1/87), relating to filing requirement (KRS 140.160(2), 140.190, 140.210(2), and 140.220);

(e) Revenue Policy 92P026 (9/1/87), relating to filing requirements (KRS 140.010, 140.190, and 140.210);

(f) Revenue Policy 92P029 (12/1/92), relating to interest for late payments of inheritance tax (KRS 131.010, 131.175, and 140.210);

(g) Revenue Policy 92P030 (12/1/82), relating to penalty for undervaluation of assets (KRS 131.010, 131.180, 140.210, and 140.991);

(h) Revenue Policy 92P031 (12/1/82), relating to penalties for late filing and late payment of inheritance tax (KRS 131.010, 131.180, 140.160, 140.210, and 140.991);

(i) Revenue Policy 92P035 (8/19/96), relating to valuation of real estate (KRS 131.110 and 140.165);

(j) Revenue Policy 92P040 (Revised 12/1/86), relating to power of appointment-taxation of remainder interest (KRS 140.040 and 140.110 (1));

(k) Revenue Policy 92P050 (Revised 7/13/90), relating to appointment in donor's and donee's estates (KRS 140.040 and 140.060(1)(a));

(l) Revenue Policy 92P060 (6/1/93), relating to assessment of real property for inheritance tax purposes (KRS 140.165 and 140.330);

(m) Revenue Policy 92P080 (Revised 7/10/90), relating to qualified real estate (KRS 140.330(4)(c) and case law);

(n) Revenue Policy 92P090 (6/1/93), relating to qualified real estate (KRS 140.330(4)(b) and case law);

(o) Revenue Policy 92P100 (6/1/93), relating to qualified real estate (KRS 140.320);

(p) Revenue Policy 92P110 (6/1/93), relating to qualified real estate (KRS 140.330 and 140.320);

(q) Revenue Policy 92P115 (12/1/86), relating to conveyance of "Qualified Real Estate" (KRS 140.330 through 140.360);

(r) Revenue Policy 92P116 (12/1/86), relating to conveyance of "Qualified Real Estate" (KRS 140.330 through 140.360);

(s) Revenue Policy 92P120 (Revised 7/10/90), relating to conveyance of jointly held property (KRS 140.050 and case law);

(t) Revenue Policy 92P130 (Revised 11/20/90), relating to conveyance of jointly held government bonds (KRS 140.050(c), 140.065, and case law);

(u) Revenue Policy 92P140 (6/1/93), relating to conveyance of real property located in another state (KRS 140.010 and case law);

(v) Revenue Policy 92P150 (6/1/93), relating to conveyance of real property located in another state (KRS 140.010 and case law);

(w) Revenue Policy 92P160 (Revised 6/30/88), relating to real estate located in another state (KRS 140.010 and case law);

(x) Revenue Policy 92P165 (12/1/86), relating to credit life insurance (KRS 140.030(2), 140.030(1), and case law);

(y) Revenue Policy 92P166 (9/1/87), relating to assignment of life insurance proceeds (KRS 140.090(1) and case law);

(z) Revenue Policy 92P176 (9/1/87), relating to paid-up life insurance policies (KRS 140.030(2) and 304.1-030);

(aa) Revenue Policy 92P170 (6/1/83), relating to re-
mainder interests (KRS 140.010); Revenue Policy 92P190 (1/29/88), relating to trusts (KRS 140.020 and case law);
Revenue Policy 92P190 (6/1/83), relating to transfer with retained possession, enjoyment or income therefrom (KRS 140.020);
Revenue Policy 92P200 (Revised 12/1/86), relating to transfers in contemplation of death (KRS 140.020);
Revenue Policy 92P210 (Revised 9/1/87), relating to Life estates-wills (KRS 140.100 and case law);
Revenue Policy 92P220 (12/1/86), relating to wrongfull death (KRS 140.010, 140.090(1), KRS 411.130);
Revenue Policy 92P225 (11/14/88), relating to Kentucky public employee's retirement plans (KRS 5.255, 21.470, 61.690, 140.063(1)(c), 161.700, and 164.2871);
Revenue Policy 92P245 (9/1/87), relating to deferred compensation (KRS 140.010, 140.020, and case law);
Revenue Policy 92P250 (6/1/83), relating to federal civil service retirement plan annuities (KRS 140.063);
Revenue Policy 92P255 (11/17/87), relating to death benefits (KRS 61.705, 140.090(1), 181.655, and 342.720);
Revenue Policy 92P260 (12/1/86), relating to the deduction of interest on federal estate taxes (KRS 140.040);
Revenue Policy 92P261 (9/1/87), relating to deductions (KRS 140.010 and 140.090(1));
Revenue Policy 92P262 (9/1/87), relating to deduction (KRS 140.090(1));
Revenue Policy 92P263 (9/1/87), relating to deduction of interest on installment obligations (KRS 140.090(1)(h) and 395.195);
Revenue Policy 92P264 (11/14/88), relating to deduction of selling expenses (KRS 140.090(1)(h) and 395.195);
Revenue Policy 92P265 (12/1/86), relating to exemption of annuities payable to a beneficiary (KRS 140.063);
Revenue Policy 92P270 (9/1/83), relating to casualty losses (KRS 140.090);
Revenue Policy 92P270 (6/1/83), relating to power of appointment-minor's beneficiary (KRS 140.040 and 140.060);
Revenue Policy 92P290 (6/1/83), relating to power of appointment in donee's estate (KRS 140.040 and case law);
Revenue Policy 92P300 (6/1/83), relating to power of appointment in donee's estate (KRS 140.040, 140.060, and case law);
Revenue Policy 92P310 (6/1/83), relating to classification of beneficiaries-remained daughter-in-law (KRS 140.070),
Revenue Policy 92P311 (9/1/87), relating to classification of beneficiaries-spouse of stepchild (KRS 140.070),
Revenue Policy 92P320 (Revised 11/20/90), relating to classification of beneficiaries-great-nieces, great nephews, nieces, and nephews by marriage (KRS 140.070);
Revenue Policy 92P335 (9/1/87), relating to non-resident beneficiaries (KRS 140.010, 140.070, and 140.060),
Revenue Policy 92P336 (Revised 7/19/90), relating to exemption for the mentally disabled (KRS 140.090(1)(a));
Revenue Policy 92P340 (Revised 12/1/86), relating to contested wills (KRS 140.010 and 140.090(1));
Revenue Policy 92P345 (3/1/88), relating to federal income tax refund or liability (KRS 140.010 and 140.090(1));
Revenue Policy 92P350 (Revised 12/1/86), relating to previously-taxed property (KRS 140.095), and
Revenue Policy 92P360 (6/20/88), relating to confidentiality of tax returns (KRS 131.130(1) and 140.180).

Section 2. Revenue Circular 82C200 (revised 7/1/88), Relating to Custody and Control of Securities, Deposits or Other Property by Financial Institutions (KRS 140.250), [The circular] is no longer valid as KRS 140.250 was repealed in 2000 Ky. Act Ch. 151, sec. 7 effective July 13, 2000. Accordingly, Revenue Circular 82C200 is hereby rescinded and shall be null, void, and unenforceable.

Section 3. Revenue Policy 92P070 (Revised 12/1/86), Relating to Contested Wills,[The policy] merely restates or summarizes the requirements or provisions of the inheritance and estate tax statutes of KRS Chapter 140, 394, and case law. Accordingly, Revenue Policy 92P070 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Tax
(As Amended at ARRS, March 13, 2007)

103 KAR 26:010. Service enterprises in general.

RELATES TO: KRS 139.110
STATUTORY AUTHORITY: KRS 139.110(1) [Chapter 43A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 139.110(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes [interim-rate] sales and use tax requirements for [law-as-it-applies to] service enterprises in general.

Section 1. (1) Persons engaged in the business of rendering service shall be classified as [are] consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax shall apply, accordingly, to the sale of [tangible] personal property to consumers [the property to them].

(2) The list in this subsection shall serve as examples of service enterprises [may include, but are not limited to, the following]:
(a) Advertising agencies;
(b) Banks;
[c] Advertising agencies, laundromats, cleaners; Barbers;
[d] Beauty shop operators;
[e] Law-repairmen, taxidermists, shoe-repairmen; Bootblacks;
[f] Cleaners;
g] Laundromats;
h] Shoe repairmen;
i) Taxidermists;
j) Tire repairers; and
[k] [and] Similar enterprises.

Section 2. (1) Persons rendering professional services shall be classified as [are] consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services.

(2) The list in this subsection shall serve as examples of [such] persons rendering professional services:
(a) lawyers, architects, engineers, etc.; Accountants;
(b) Architects;
c) Audience research service providers;
d) Cable television service providers;
(e) Construction Information service providers;
(f) Engineers; and
(g) Lawyers.

Section 3. If a person engaged in the business of rendering services also regularly engages in the business of selling tangible personal property to consumers, that person shall be classified as a retailer with respect to the sales, and shall obtain permits, file returns, and remit tax measured by the sales. If any of the above persons or enterprises, in addition to using property incidentally in conjunction with rendering services, are regularly engaged in selling tangible personal property to consumers, they are retailers with respect to the taxable sales, and they shall [must] [obtain permits, file returns, and remit tax measured by the taxable sales].
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 27:150. Repairers and reconditioners of personal property.

RELATES TO: KRS 139.050, 139.090, 139.100, 139.110, 139.120, 139.140, 139.180, 139.190, 139.200, 139.220, 139.270, 139.280, 139.290, 139.310, 139.350.

STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 13A]

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. This administrative regulation establishes [interprets] [as interpreted] the sales and use tax requirements for [law as it applies to] parts and materials used by repairers and reconditioners of tangible personal property.

Section 1. (1) A repairer or reconditioner [Repairers and reconditioners] of tangible personal property shall be classified as a retailer [Repairmen] [are retailers] of parts and materials furnished in connection with repair work in which the value of the parts and materials is substantial in relation to the total charge.

(2) Examples of a repairer or reconditioner shall include: [These apply, for example, to] (a) repairers of motor vehicles, airplanes, bicycles, machinery, farm implements, musical instruments, computers, radios, television sets, boats, and furniture.

(3) The repairer or reconditioner shall [repairman should] segregate on the invoices to their customers and in their books and records the [repair-sales] price of the parts and materials from the charges for the labor. [Repairers and reconditioners] and [installation and other services]. The tax shall be [as] applicable to the sales [selling] price of the [available] property.

(4) If the labor and other services are not [thus shown] separately stated from the [selling] price of the property furnished as required by subsection (3) of this section, it shall [will] be presumed that the entire charge represents the sales price of the property and the tax shall apply [applies] to the entire charge [taxable].

Section 2. (1) If, however, the value of the parts and materials used in the repair or reconditioning of tangible personal property [works] is [insignificant]-[less than ten (10) percent]-[in relation to]-of the charges for the labor or other services performed and [where] no separate charge is made for the [work] property, the repairer or reconditioner shall be classified as [repairman] [as] the consumer of the property, and the [seller] suppliers of parts and materials shall be classified as [are] retailers subject to the tax with respect to the property which they sell to the repairer or reconditioner [him]. [The applies, for example, to] repairers of trees, tubs, clothing, fishing rods, watches, and jewelry.

(a) The list in this subsection shall serve as examples of repairs or alterations in which the parts and materials used are less than ten (10) percent [insignificant] in relation to the charges for labor or other services performed: [I]

(a) Repairs of:
1. Clothing;
2. Fishing rods;
3. Jewelry;

(b) Alterations performed by the retailer to refill clothes and other garments for the use for which they were originally produced.

Section 3. [Repairmen or] Ordinarily considered consumers may, however, be retailers subject to the tax if the property used is of substantial value. Examples are plumbers and electricians, who are the sellers of items of building equipment or fixtures which they install for the first time or as a replacement.

Section 4. If the method of repairing or reconditioning [certain] tangible personal property involves commingling property delivered to a repairer [repairman] or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairer [repairman] or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that [as] delivered, tax shall apply [applies] to the entire amount charged by the repairer [repairman] or reconditioner for the exchange of property, and a deduction shall not [be] allowed for services involved since the exchange and other acts incidental to it constitute an integral transaction. This shall apply [applies], for example, to the exchange of a reconditioned vehicle motor for a worn motor.

Section 4. (1) Receipts from the sale of optional service, maintenance, or [and] extended warranty contracts offered, but not required as a part of the sale of taxable tangible personal property shall not be subject to sales and use tax if the retailer separately itemizes the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records. The person performing the repair work under the contract shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of optional service, maintenance, or [and] extended warranty contracts.

(2) Receipts from the sale of service, maintenance, or [and] extended warranty contracts that are included as part of the sale of taxable tangible personal property shall be included in the sales price subject to tax as provided in KRS 139.050.

Section 5. (1) This administrative regulation shall replace Revenue Circular 61C018 and Revenue Policy 51P190.

(2) Revenue Circular 61C020 and Revenue Policy 51P190 are hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 27:220. Miscellaneous restaurant transactions.

RELATES TO: KRS 91A.400, 139.050, 139.090, 139.100, 139.110, 139.120, 139.140, 139.160, 139.170, 139.200, 139.210, 139.220, 139.270, 139.290, 139.310, 139.330, 139.480, 139.485

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes [interprets] the sales and use tax requirements for [law as it applies to] miscellaneous transactions relating to
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restaurants.

Section 1. Definitions. (1) "Food and food ingredients" is defined in KRS 139.485(2).
(2) "Prepared food" is defined in KRS 139.485(3)(g).

Section 2. Tax shall apply to any charge added to the price of prepared food by a restaurant, including a gratuity, service charge, surcharge, or fee itemized on the invoice or ticket to the customer by the restaurant. These charges shall be considered part of the selling price of prepared food. A voluntary gratuity left by the customer shall not be subject to tax. A gratuity not required by the restaurant but willingly added by the customer shall be considered voluntary.

Section 3. A restaurant employee shall pay tax on the sales price of any prepared food or other taxable item purchased from the employer.

Section 4. (1) Tangible personal property shall be subject to tax based upon the restaurant's purchase price if the property was:
(a) Purchased exempt from tax under a [Kentucky] Resale Certificate (Form 51A105) or a Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Form 51A200), both incorporated by reference in 103 KAR 3:020; and
(b) [] provided free of charge to employees, or otherwise used or consumed by the restaurant (shall be subject to tax based upon the restaurant's purchase price).
(2) Food and food ingredients and prepared food donated by a restaurant to charity shall not be subject to the tax.

Section 5. The tax imposed by a city on a restaurant pursuant to KRS 91A.400 shall be classified as [i.e.] a license tax that when passed on to customers shall constitute gross receipts subject to sales tax according to the provisions of KRS 139.050.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C001-S2 and Revenue Policy 51P345.
(2) Revenue Circular 51C001-S2 and Revenue Policy 51P345 are hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
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CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5523, fax (502) 564-2506.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 27:230. Automotive body shops or [and] suppliers.

RELATES TO: KRS 139.050, 139.090, 139.100, 139.110, 139.120, 139.140, 139.160, 139.200, 139.210, 139.220, 139.230, 139.240, 139.250, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes [i.e. necessary to implement the] sales and use tax requirements for [as] it applies to transactions involving automotive body shops or [and] related suppliers.

Section 1. (1) Automotive body shops shall be classified as [are] retailers of parts and materials used in body work that become a component part of a motor vehicle.
(2) The list in this subsection shall serve as examples of parts and materials used in body work that become a component part of a motor vehicle:
(a) Body putty;
(b) Body solder;
(c) Finishing glazes;
(d) Lacquers;
(e) Paint;
(f) Plastic filler;
(g) Primer;
(h) Resins (epoxy, fiberglass, or [and] polyester);
(i) Sealants;
(j) Shellacs;
(k) Thinners;
(l) Undercoating; and
(m) Welding rods.

(3) An automotive body shop may purchase materials and parts that become component parts of a motor vehicle without paying tax to a supplier if the body shop issues a Resale Certificate, Form 51A105, which is incorporated by reference in 103 KAR 3:020, to the seller at the time of purchase.

(4) An automotive body shop shall collect sales tax on charges for materials and parts sold to customers. They shall separately state on the customer invoice and in their records the sales price of the parts and materials from the charges for repair and installation labor. If the labor charges are not separately stated, [then] the presumption shall be that the entire charge represents the sales price of tangible personal property sold with the applicable tax due from the seller.

Section 2. (1) An automotive body shop shall be classified as [i.e.] the consumer of items of tangible personal property used in the performance of body work that do not become a component part of the motor vehicle and shall pay tax on the items accordingly.
(2) The list in this subsection shall serve as examples of items used [enumerated] in the performance of body work that do not become a component part of a motor vehicle:
(a) Acetylene and other welding gases,
(b) Cleaners,
(c) Compound pads,
(d) Flux,
(e) Masking paper,
(f) Masking tape,
(g) Polishing or [and] buffing pads,
(h) Removers (liquid or [and] paste);
(i) Rubbing compounds;
(j) Sanding discs,
(k) Sandpaper; or [and]
(l) Waxes.

Section 3. (1) This administrative regulation shall replace Revenue Circular 51C001-S12.
(2) Revenue Circular 51C001-S12 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5523, fax (502) 564-2506.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 27:240. Reporting of sales tax relating to equine breeding fees.

RELATES TO: KRS 139.050, 139.120, 139.140, 139.200,
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 28:010. Admissions.

RELATED TO: KRS 139.480, 139.100, 139.110, 139.120,
139.130, 139.140, 139.200, 139.270 139.482, 139.495

NECESSITY, FUNCTION, AND CONFORMITY: KRS
139.130(1) authorizes the Department of Revenue to promulgate
administrative regulations necessary for the administration and
enforcement of all tax laws in Kentucky. This administrative regulat-
on establishes requirements for the sale of admissions to an event or
activity. An admission is a separate and additional charge for which
the privilege of using the facilities or participating in the event or
activity is purchased.

Section 1. Definition. (1) "Admissions" means the right of
entrance to a display, program, sporting event, music concert,
performance, play, show, movie, exhibit, fair, or other entertain-
ment event or amusement.

Section 2. (1) The gross receipts from the sale of admissions
shall be [taxable as proceeds of an amusement or entertainment event]
and subject to tax unless the fees are paid for the privilege of using the
facilities or participating in the event or activity. The fees are subject
to tax unless the fee is separately stated on the ticket price.

(a) If the tax is included in the total price, a statement shall
appear on the ticket price that the tax is included.

(b) If the tax is not included in the total price, a receipt shall
be given stating that the tax was charged and

(3) Each admission shall be a separate sale.

(4) Payments that are required as a prerequisite for admission
even if designated as a donation shall be [taxable and subject to tax].

Section 3. (1) Tuition, registration fees, or [and] ticket charges
paid to attend instructional seminars, conferences, or workshops
shall not be considered the primary intent of which is for educa-
tion rather than admission, and shall be taxable as admissions.

(2) Separate charges for meals or other materials
sold at or in conjunction with instructional seminars, conferences,
or workshops shall be subject to sales and use tax unless an
applicable exemption applies.

Section 4. Taxable Admissions. The following list in this
section shall serve as [examples] of examples of admissions paid
that are subject to tax:

(1) Amusement parks;
(2) Art exhibits;
(3) Auditoriums where lectures and concerts are given for
entertainment purposes;
(4) Bars with cover charges;
(5) Baseball parks;
(6) Box seats;
(7) Cabarets;
(8) Dance halls;
(9) Fairgrounds;
(10) Football stadiums;
(11) Gymnasiums;
(12) Movie theatres;
(13) Museums;
(14) National park facilities that are operated under fee;
(15) Night clubs;
(16) Race tracks;
(17) Simulcast facilities;
(18) Skating rinks or [and] skating parks as a spectator;
(19) State parks;
(20) Street fairs or [and]
(21) Theatres

Section 5. Nontaxable fees. The list in this section shall serve
as [examples] of nontaxable fees if the fees are paid for the privilege of using the facilities or participating
in an event or activity. The fee is a separate and additional
charge from any general admission charge:

(1) Amusement park ride charges;
(2) Bowling fees;
(3) Fishing or picnicking fees;
(4) Golf, greens fees or driving range fees;
(5) Miniature golf fees;
(6) Skating fees;
(7) Swimming fees;
(8) Tennis fees;
(9) Dancing fees;
(10) Theatres

Section 6. Admissions listed in this section shall not be
[taxable] and subject to sales tax:

(1) Admissions to race tracks [including admissions for
events or stadium] for which admission is included in the
price paid for the privilege of entering the track;
(2) Admissions sold by nonprofit charitable and educational
institutions qualifying for exemption under KRS 139.495 [are not
subject to the sales tax];

(4) Complimentary passes provided by the person conducting
the event or fand;

(5) Gross receipts from the first $50,000 in sales of admissions
to county fairs as provided in KRS 139.470(24) [139.480(24)].

Section 7. (1) This administrative regulation shall replace
Revenue Circular 51C001-S6 and Revenue Policies 51P395 and
51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies
51P395 and 51P400 are hereby rescinded and shall be null, void,
and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 28:030. Producing, fabricating and processing.

RELATES TO: KRS 139.050, 139.090, 139.100, 139.120,
139.130, 139.260

STATUTORY AUTHORITY: KRS 139.130(1) [Chapter 49A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS
139.130(1) authorizes the Department of Revenue to promulgate
administrative regulations necessary for the administration and
enforcement of all tax laws in Kentucky. This administrative regula-
tion establishes, [necessary to interpret the] sales and use tax
requirements for [as it applies to] the producing, fabricating
or [and] processing of property furnished by consumers.

Section 1. Tax shall apply [apply] to charges for producing,
fabricating, processing, printing, or imprinting tangible personal
property for consumers who furnish either directly or indirectly,[1]
the materials used.

Section 2. "Producing," "fabricating," and "processing" shall
include any labor which results in the creation or production of
tangible personal property or which is a step in a process or series
of operations resulting in the creation or production of tangible
personal property.

Section 3. Tangible personal property which is cut, threaded,
shaped, bent, polished, welded, sheared, engraved, punched,
drilled, machined, monogrammed, decoratively stitched, or in some
other way has work performed on it to change it from its original
state into something else with different characteristics[,] shall be
considered to have been fabricated. Examples of taxable charges
shall include [but are not limited to] the items listed in this sec-
tion following:

(1) A piece of rod is bent into a "U" shape; the two (2) ends
threaded to form a U-bolt. An entirely new item is made which
doesn't resemble the original. This shall be considered [are]
fabrication and shall be [are] taxable. Tax shall [should] be applied to
the total selling price of the fabricated article.

(2) Two (2) pieces of sheet steel are laid side by side and
a single-bead weld is drawn along the two (2) edges to join them

(3) If a gear with a worn hole is filled in or built up and a larger
or smaller hole bored in it to fit a larger or smaller shaft, this shall
be considered [are] fabrication and the full amount charged shall
be [are] subject to tax.

(4) The total charge for manufacturing apart in the shop from
stock shall be [are] fully taxable.

(5) Decorative stitching, monogramming, or engraving added to
any tangible personal property shall be considered fabrication
and shall be subject to tax. [The occasion may arise when parts
are not immediately available from regular sources or perhaps are
too-expensive.]

Section 4. "Producing," "fabricating," and "processing" shall
[are] not include labor which does not result in the creation or pro-
duction of tangible personal property or which does not constitute a
step in a process or series of operations resulting in the creation or
production of tangible personal property, but which constitute
merely the repair or reconditioning of tangible personal property to
refit it for the use for which it was originally produced. This [Such]
repair and reconditioning shall be [are] governed by the provisions
of 103 KAR 27.150.

Section 5. (1) This administrative regulation shall replace
Revenue Policy 51P200.

(2) Revenue Policy 51P200 is hereby rescinded and shall be
null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales & Excise Tax
(As Amended at ARRS, March 13, 2007)

103 KAR 28:170. Sales of dirt and sod.

RELATES TO: KRS 139.160, 139.200, 139.480
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regula-
tion establishes the requirements for applying [shall define the
applicability of] sales tax to the sales of dirt or sod and the pur-
purchases of farm machinery used in the production of sod as a busi-
ness.

Section 1. Definition. [(4)] "Farm machinery" is defined in KRS
139.480(11).

Section 2. Dirt or sod sold while attached to real estate and
immediately severed shall be [are] considered tangible personal
property and shall be [are] subject to sales and use tax.

Section 3. Farm Machinery. Persons regularly engaged in
raising sod as a product for sale shall be [are] considered to be
tilling [and cultivating] the soil for the production of crops as a
business as provided in KRS 139.480(11). [Therefore,] Farm ma-
machinery used exclusively and directly in the production of sod as a
business shall [may] be purchased exempt from tax if the pur-
chaser issues a Farm Exemption Certificate, Revenue Form
51A158, which is incorporated by reference in 103 KAR 3 020, to
the seller at the time of purchase.

Section 4. (1) This administrative regulation shall replace
Revenue Policy 51P110.

(2) Revenue Policy 51P110 is hereby rescinded and shall be
null, void and unenforceable.

JOHN R. FARRIS, Secretary
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(Amended as Amended to ARR, March 13, 2007)

103 KAR 30:140. Energy and energy-producing fuels.

RELATES TO: KRS 139 480(3)
STATUTORY AUTHORITY: KRS [Chapter 43A] 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. This administrative regulation establishes the requirements for (a) necessary to define and classify the exemptions provided for energy and energy-producing fuels [and to establish procedures for claiming the exemption and reporting taxable purchases].

Section 1. Definitions. (1) "Cost of production" means the total of all expenses, according to accepted accounting principles, incurred in manufacturing, mining, processing, or refining of tangible personal property computed on the basis of "plant facilities" except for:
(a) The cost of the energy or energy-producing fuels used therein;
(b) The related distribution, transmission, and transportation services for the energy that are billed to the user.
(c) In the course of" means those phases of a company's operations in which the expenses incurred are properly included in the computation of the cost of production;
(d) "Plant facilities" is defined in KRS 139 480(3). The sales and use tax does not apply to the sale, use, storage or other consumption of energy or energy-producing fuels used in the course of manufacturing, industrial processing, mining, or refining to the extent that the cost of all energy or energy-producing fuels used exceeds three (3) percent of the cost of production. The phases in the course of manufacturing, etc., as used in this administrative regulation refers to these phases of a company's operations in which the expenses incurred are properly included in the computation of the cost of production. The cost of production must be computed on the basis of plant facilities. The term "plant facilities" means all permanent structures affixed to real property at one (1) location.

Section 2. The list in this section shall serve as examples of accounts or classifications normally reflected in the computation of the cost of production:
(1) Direct materials;
(2) Direct labor costs;
(3) Overhead expenses;
(4) Depreciation for plant equipment;
(5) Insurance for plant equipment;
(6) [2] Taxes for plant equipment;
(7) [4] Rent or depreciation for plant building;
(8) [6] Compensation insurance;
(9) [6] Indirect materials;
(10) [4] Indirect labor;
(11) [4] Miscellaneous factory expenses;
(12) [6] Administrative expenses allocated to cost of production, and

Section 3. A taxpayer claiming an exemption for energy or energy-producing fuels under KRS 139 480(3) shall compute the [with respect to the allocation of administrative and office expenses to production, a considerable degree of flexibility exists within the scope of acceptable accounting practices. Therefore, no attempt is made to dictate specific requirements for the allocation of such expenses. However, all taxpayers claiming an exemption for energy or energy-producing fuels under KRS 139 480(3) are required to compute their cost of production on a basis consistent with accepted accounting principles [and accounting practices]. Any significant deviations from procedures used in previously reported [past] periods which are based on considerations of sales tax reduction shall [will] not be permitted.

Section 4. Consumers of energy and energy-producing fuel who qualify for [are entitled to] an exemption under this administrative regulation shall:
(1) Submit [may] apply to the Department of Revenue [Cabinet] for an Application for "Energy Direct Pay Authorization", Form 51A109, which is incorporated by reference in 103 KAR 3 020(1) and
(2) Upon issuance of an "Energy Direct Pay Authorization Notification", Form 51F010, which is incorporated by reference in 103 KAR 3 020, [thereof-by-the-cabinet] shall pay the [be responsible for the payment of] taxes due under this administrative regulation.

Section 5. (1) The "Application for an ["] Energy Direct Pay Authorization", Form 51A109, shall be filed with the Department of Revenue [energy direct pay authorization shall be made upon a form prescribed by the Revenue Cabinet].
(2) The applicant shall [must] set forth an itemization of the accounts included in the computation of cost of production based upon costs incurred in the last completed fiscal or calendar year ending prior to the date of the application.
(3) If the energy cost and any related distribution, transmission, and transportation services for this energy that are billed to the user exceed three (3) percent of the cost of production [as defined herein], the taxpayer shall:
(a) [there] Estimate the tax by:
1. Multiplying the cost of production by three (3) percent; and
2. Multiplying [multiply] the resulting figure by six (6) percent; and
(b) [then-1be required to] Report and make monthly payments equal to one-twelfth (1/12) of the total estimated tax.

Section 6. Four (4) months after the end of each fiscal or calendar year ending subsequent to the date of the authorization, the taxpayer shall:
(1) File a "Kentucky Sales and Use Tax [then] (file an ["Energy Exemption Annual Return", Form 51A125, which is incorporated by reference in 103 KAR 3 020, [a return] reconciling the [his] estimate to the amount of tax due; or
(2) [and] Pay the additional tax due; or
(a) [or] If no additional tax is due, credit the overpayment on [his] next year's estimate or apply for a refund; and
(b) [At the same time, the taxpayer shall] Make an [his] estimate for the succeeding year and adjust the payment for the months remaining so that the total tax to be paid for the year will agree with the total estimated tax. This estimate shall include the same information required by [described in] Section 5 of this administrative regulation.

Section 7. An "Energy Direct Pay Authorization Notification", Form 51F010, shall [energy direct pay authorization may] not be used for any purchases other than energy or energy-producing fuels used in the course of manufacturing, industrial processing, mining, or refining and any related distribution, transmission, and
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transportation services for this energy that are billed to the user.

Section 8. An "Energy Direct Pay Authorization Notification", Form 51F010, shall [energy direct pay authorization will not be issued unless the cost of energy or energy-producing fuels and any related distribution, transmission, and transportation services for this energy that are billed to the user during the immediately preceding year exceeds three (3) percent of the previous year's cost of production; For new taxpayers without a previous year's cost of production history, the taxpayer may submit the estimated energy costs and cost of production for consideration by the department. [as hereon defined] [or unless the taxpayer can show a reasonable basis] [believably] [satisfaction Mah the] [such] [cost may reasonably be expected to exceed three (3) percent of the] [their] [anticipated cost of production.]

Section 9. An operator of a commercial greenhouse shall be considered [is] engaged in a processing operation and shall be entitled to purchase energy and energy-producing fuel and any related distribution, transmission, and transportation services for this energy that are billed to the user exempt from sales and use tax if the cost of the fuel exceeds three (3) percent of the cost of production as provided in Section 5(f) of this administrative regulation.

Section 10. (1) This administrative regulation shall replace Revenue Policy 51P020.

(2) Revenue Policy 51P020 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARR1, March 13, 2007)

103 KAR 30:250, Property used in the publication of newspapers.

RELATES TO: KRS 139.050, 139.090, 139.100, 139.110, 139.120, 139.140, 139.170, 139.190, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139 470(11), 139.480(10)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes [as necessary to interpret the] sales and use tax requirements for [law as it applies to] manufacturing activities relating to the publication of newspapers.

Section 1. Definition. (f) "Plant facility" is defined in KRS 139.170(3).

Section 2. Requirements for Exemption. The storage, use, or other consumption of tangible personal property for use in the manufacturing process of newspaper publication shall be exempt from the sales and use tax according to the provisions of KRS 139.170, 139.470(11), 139.480(10), and 103 KAR 30:120.

Section 3. Manufacturing Process. The manufacturing process shall include the following operations performed at a plant facility in a continuous operations flow: []

1. Prepress operations.
   (a) Type-setting that transforms the text and images from the final preprint edit format into a design, layout or paste-up format ready for printing whether performed electronically, digitally, by hardcopy layout, or by other printing technology now in existence or later devised; and [ ]
   (b) The production of printing plates made photo mechanically or digitally; [ ]
   (2) Press and printing processes.
   (a) Printing and collating the hard copy newspaper pages in accordance with the preprint design; [ ]
   (b) Examples of conventional printing processes shall include:
      1. Letterpress;
      2. Flexography;
      3. Lithography; or [and ]
      4. Gravure; and [ ]
   (3) Mail room operations, including [ ] addressing, labeling and packaging for distribution.

Section 4 Nonmanufacturing Process. The following operations shall not constitute activities performed within the manufacturing process of newspaper publication:

(1) Photography and reporting, except for development of negatives and the production of prints at the newspaper plant facility; [ ]
(2) Newsroom activities. The list in this subsection shall serve as examples of newsroom activities:
   (a) Monitoring of news events [or] [and] related research;
   (b) Composition of news stories, opinions, [or] [and] editorials for editorial review; [ ]
   (c) Editing process; [or] [and] [ ]
   (d) Layout and page design by editorial staff; [ ]
   (3) Selling and design of advertisements; [ ]
   (4) Library and research, including the use of servers, computers and other equipment to compile and index information; [or]
   (5) Storage and loading dock operations, including the storage of paper [or] [and] other raw materials [or] [and] the conveyance of packaged newspapers for storage, loading, or distribution.

Section 5. Subscription charges for wire services for the transmission of unedited text shall be considered [are] purchases of services not subject to the sales and use tax.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C012.

(2) Revenue Circular 51C012 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARR1, March 13, 2007)

103 KAR 30:250, Pollution control facilities exemption.

RELATES TO: KRS 139.200, 139.260, 139.270, 139.310, 139.330, 139.480, 139.540, 139.550, 224.01-300, 224.01-310, STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes [as necessary to interpret the] sales and use tax requirements for [law as it applies to] manufacturing activities relating to the pollution control exemption established by KRS 139.480(12).

Section 1. Definitions. (1) "Date of the making of the application" means the postmark date, date of electronic submission, or date hand-stamped by [hand-delivered date to] the department for the application for Pollution Control Tax Exemption Certificate, Form
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51A216, which is incorporated by reference in 103 KAR 3.020.
(2) "Pollution control facility" is defined by KRS 224.01-300(1).

Section 2. Application Process for Certification. (1) An applicant shall:
(a) File an Application for Pollution Control Tax Exemption Certificate, Form 51A216, which is Incorporated by reference in 103 KAR 3:020, with the Department of Revenue;
(b) Submit a copy of the plans or blueprints and a materials and equipment listing with the application;
(c) Provide a detailed explanation of what types of pollution control (water, noise, or air) are to be removed or abated (for example, air pollution control facilities associated with construction activities and how the pollution abatement functions primarily to control pollution as required under KRS 224.01-300);
(d) Provide costs of the materials and equipment on which the exemption is requested; and
(e) Provide any other information needed by the department based on the nature of the project to ensure compliance with KRS 139.480(10) and 139.480(10)(b).

(2) The department shall issue a qualifying applicant a "Pollution Control Tax Exemption Certificate", Form 51A226, which is incorporated by reference in 103 KAR 3:020, upon final approval. The effective date of the certificate shall be the date the application is made to the department as provided under KRS 224 01-310(1).

(3) Each application for pollution control certification shall be project and location specific and shall not constitute a blanket certification for the operations of the applicant.

Section 3. Exemption Procedures. (1) Before the department issues an authorized "Pollution Control Tax Exemption Certificate", an applicant may issue a completed "Certificate of Exemption for Pollution Control Facilities", Form 51A149, which is incorporated by reference in 103 KAR 3:020, separately or jointly with a construction contractor, to a seller for the exempt purchase of materials and equipment used in the construction, erection, or installation of the facility for which an application for pollution control certification has been made.

(2) If an "Application for [ ] Pollustion Control Tax Exemption Certificate" is subsequently denied in [whole or in part], the applicant shall [immediately] report and pay the tax due directly to the Department of Revenue, according to the provisions of KRS 139.270 and 139.540, and on all purchases made exempt from tax but not certified as exempt.

(3) After final approval, a qualifying applicant shall issue a completed "Certificate of Exemption for Pollution Control Facilities", Form 51A149, separately or jointly with a construction contractor to a seller for the exempt purchase of materials and equipment used in the construction, erection or installation of the certified pollution control facility.

Section 4. In addition to the pollution control exemption, the purchase of property may also qualify for exemption under KRS 139.480(10) as machinery for new and expanded industry if the requirements of KRS 139.170 and 139.480(10) are met. However, the exemption provided for pollution control equipment under KRS 139.480(10) as machinery for new and expanded industry is more restrictive than the pollution control exemption because of the limiting language of KRS 139.170. Pollution control equipment that does [may] not qualify for exemption as machinery for new and expanded industry under KRS 139.480(10) may still [but it will not] be eligible for exemption as a certified pollution control facility as defined in KRS 224.01-300(1).

Section 5. Nonqualified property. (1) A sewage treatment plant used for the treatment of residential sewage shall not qualify for exemption as a pollution control facility.

(2) Repair and replacement parts and maintenance items purchased for a completed pollution control facility shall be taxable.

Section 6. (1) This administrative regulation shall replace Revenue Policy 51F377 and Revenue Circular 51C006.

(2) Revenue Policy 51F377 and Revenue Circular 51C006 are hereby rescinded and shall be null, void and unenforceable.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 30:270. Oil and gas extraction machinery.

RELATES TO: KRS 139.050, 139.090, 139.100, 139.110, 139.120, 139.140, 139.170, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.320, 139.370, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation[establishes [is necessary to interpret]] the sales and use tax requirements for [taxable as it applies to] transactions relating to the oil and gas extraction industry.

Section 1. Definition. [(4)] "Contract driller" means a person performing a drilling service for the owner or operator of an oil or gas well under a contractual relationship for consideration.

Section 2. Eligible Property for Exemption. The storage, use or other consumption of tangible personal property for use in the extraction or production process for oil or natural gas which will be for sale shall be exempt from the sales and use tax according to the provisions of KRS 139.170, 139.470(11), and 103 KAR 30.120.

(1) The extraction or production process for oil shall be considered as beginning [begins] with the erection of the drilling rig at the drilling location and shall be considered as terminating [terminating] at the settling tank immediately prior to transportation. Oil tanks used for storage alone shall be subject to tax.

(2) The extraction or production process for natural gas shall be considered as beginning [begins] with the erection of the drilling rig at the location of the well and shall be considered as continuing [continues] until the gas leaves the outlet on the discharge side of the final gathering compressor station. The pipeline from the outlet to the transmission line shall be subject to tax.

(3) The list in this subsection shall serve as examples of machinery used in the extraction or production process:
(a) Drilling rigs;
(b) Casings;
(c) Tubing;
(d) Well head equipment;
(e) Pumps;
(f) Compressors;
(g) Production and gathering pipe;
(h) Cleaning equipment; and
(i) Oil settling tanks.

(4) The list in this subsection shall serve as examples of other tangible personal property used in the extraction or production process:
(a) Drilling bits;
(b) Explosives;
(c) Diving muds; and
(d) Chemicals.

(5) Tangible personal property shall not be exempt from sales and use tax if it is used as "repair, replacement, or spare parts" as defined in KRS 139.170(4).

Section 3. Extraction or production process shall include the following operations:
(1) Drilling and equipping wells, to include:
(a) Drilling of the hole by the drilling rig to the producing formation;
(b) Installing casing and tubing in the hole;
(c) Stimulating production by explosives or other means; and
(d) Completion of the well by the installation of machinery and equipment.

(2) Pumping, gathering, and cleaning.
(a) Pumping shall include [includes] the use of separate pumps on individual wells, group well pumps, and auxiliary pumps at other points on the gathering system. The machinery and appurtenant equipment used in secondary methods of recovery including gas repressuring or water-flooding shall be considered [are also] part of the extraction or production process.
(b) The gathering system shall consist [consists] of a series of pipelines connecting several different wells with settling tanks grouped together for production purposes. Compressors used to stimulate production and to continue in effect the processing production operation shall be considered [may also be] part of the gathering system.
(c) Cleaning operations shall occur in the final settling tank where impurities are removed from oil by chemical heating and settling processes. If a well produces both oil and gas, separator equipment shall be [is] necessary at appropriate points in the gathering lines to separate the oil and gas. In addition, various types of machinery may be used at different points in the gathering system to clean or gas.

Section 4. Nonproduction Process. Preliminary work, transportation, and marketing shall not be considered part of the oil or gas extraction or production process.
(1) Preliminary work shall include:
(a) Geological and geophysical work;
(b) Leasing or purchasing operations;
(c) Determination of drilling sites; and
(d) Surface work preparatory to drilling.
(2) The transportation of oil shall be considered as commencing [commences] when the oil is pumped from the setting tank into transportation facilities, which may be truck, rail, or pipeline, or a combination thereof.
(3) The transportation of natural gas shall be considered as commencing [commences] at the point where the production or gathering system ceases, and it is delivered into pipelines for transportation to the retail distribution system.
(4) The marketing of natural gas shall be considered as commencing [commences] when the pressure in the transportation line is reduced and the gas is delivered into a low-pressure system for distribution to the ultimate retail consumer.

Section 5. Contract Driller. (1) The exemptions provided in KRS 139.470(11) and 139.480(10) shall not apply to purchases made by a contract driller as a contract driller is providing a service and is the consumer of the machinery and materials used to provide the service.
(2) A contractor may execute a "Certificate of Exemption [for] Machinery for New and Expanded Industry", Form 51A111, which is incorporated by reference in 103 KAR 3:020, jointly with an oil or gas well owner or operator to purchase machinery only if the real or ultimate ownership of the machinery lies with the owner or operator.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C013.
(2) Revenue Circular 51C013 is hereby rescinded and shall be null, void and unenforceable.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 30:280. Sales to water haulers.
RELATES TO: KRS 139.050, 139.200, 139.270, 139.470
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes requirements for [is necessary to give guidance in regard to] the exemption of water used for residential purposes when purchased from water haulers.

Section 1. Definition. [4] "Water hauler" means a person in the business of transporting water by truck for sale to a customer.

Section 2. (1) A water hauler shall issue a resale certificate in the form described in 103 KAR 31:111 to a water company when purchasing water for resale.
(2) Gross receipts from the sale of water by a water hauler to customers for:
(a) Residential use shall not be [is not] subject to the sales and use tax; and
(b)[ ] Gross receipts from the sale of water by a water hauler to customers for use other than residential shall be [are] subject to sales and use tax unless another exemption pursuant to KRS Chapter 139 is applicable.

Section 3. (1) This administrative regulation shall replace Revenue Policy 51P261.
(2) Revenue Policy 51P261 is hereby rescinded and shall be null, void and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY. January 12, 2007
FILED WITH LegC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

RELATES TO: KRS 139.050, 139.160, 139.200, 139.310, 139.330, 139.470
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes requirements for [is necessary to give guidance in regard to] the sale of security lighting to residential or [and] commercial customers.

Section 1. Gross receipts from the sale of security lighting by utility companies for residential use shall be considered [is] a sale of electricity exempt from the sales and use tax under the provisions of KRS 139.470(6).

Section 2. Gross receipts from the sale of security lighting by utility companies for commercial customers, or [and] common areas, shall be [is] subject to the sales and use tax unless another exemption pursuant to KRS Chapter 139 is applicable [the sale is exempt due to a specific exemption].
Section 3. The utility company shall be subject to sales and use tax on the cost of the poles, light fixtures, and other materials utilized in providing security lighting.

Section 4. (1) This administrative regulation shall replace Revenue Policy 51P265.
(2) Revenue Policy 51P265 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH FCC: January 27, 2007
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(Amended at ARRS, March 13, 2007)

103 KAR 31:111. Sales and purchases for resale.

RELATES TO: KRS 139.260, 139.270, 139.280, 139.290, 139.300, [139.400, 140.410, 140.420], 139.430, 139.440, 139.720, 139.990

STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 13A, 131A-140]

NECESSITY, FUNCTION, AND CONFORMITY: 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. The administrative regulation establishes requirements (as necessary) to consolidate and clarify various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by retailers and sellers.

Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate". The resale certificate shall be one of the two types.

(1) A "single purchase certificate" shall include an itemization by the purchaser of (on which the purchaser shall itemize): the property to be purchased. A single purchase certificate may only be used for a single purchase of commodities for resale and shall not be used for subsequent purchases.

(2) A "blanket certificate" shall include a general description by the purchaser of (on which the purchaser shall generally describe) the kind of property to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:
(a) There is no change in the character of the purchaser's operation; and
(b) The purchases are of tangible personal property of the kind usually purchased by the purchaser for resale. [Every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in the state for the purpose of resale. The certificate must be taken in good faith and must be signed by the person engaged in selling tangible personal property who at the time of purchase, either intends to sell the property in the regular course of business, or cannot, at the time of the purchase, ascertain whether it will be sold or not. The certificate shall be of two types:]

(1) "Single purchase certificate" on which the purchaser must itemize the property to be purchased. A single purchase certificate may only be used for a single purchase of commodities for resale and cannot be used for subsequent purchases.

(2) "Blanket certificate" on which the purchaser is required to generally describe the kind of property to be purchased for resale in the regular course of his business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases as long as there is no change in the character of his operation and the purchases are of tangible personal property of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Kentucky Resale Certificate", Form 51A105, which is incorporated by reference in 103 KAR 3:20, the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Form 51A250, which is incorporated by reference in 103 KAR 3:120, or the "Multistate Tax Commission's Uniform Sales and Use Tax Certificate - Multistate Adoption" [As provided in KRS 411.240]. A sale for resale, where no permit is held by the person executing the resale certificate, shall be deemed retail sales and the burden of proving that the sale is not of retail is upon the seller.

Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident purchaser not required to register in Kentucky, and if the purchaser is using the "Kentucky Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. [If the form provides the option] The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate. [The certificate shall be substantially in the form prescribed below. It must include the number of the permit held by the purchaser, but if he is not required to hold a permit because he is a nonresident purchaser not required to register in Kentucky, he shall make a notation on the face of the certificate to the effect that he is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate, in all cases, must be signed by the purchaser, bear his name and address, and indicate the general character of the property sold; by the purchaser in the regular course of his business. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.]

Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale shall be on the retailer or seller. The retailer or seller may offer proof to the department that the sale in question is not subject to tax in accordance with 103 KAR Chapter 1.

(b) [However, the retailer or seller may still offer proof as deemed necessary by the department that the sale in question is not subject to tax in accordance with 103 KAR Chapter 1.]

(b) [However, if a retailer or seller receives a completed resale certificate from a restaurant business for silverware and other table settings only after a department audit [inquiry], the burden of proof shall be considered "not met" [is not met] and the retailer or seller shall remain [remain] liable for the tax. The items in this example are for use within the restaurant business rather than for resale.

(b) However, if a retailer or seller receives a completed resale certificate in the course of a department audit for purchases of disposable cups from the same restaurant business, the burden of proof shall be considered "met" [is met] because the product is of the type resold in the normal course of the restaurant business. [The following form of resale certificate is prescribed by the cabinet pursuant to KRS 139.280 and 139.420.]

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Blanket Certificate

Single Purchase Certificate

I HEREBY CERTIFY: That I hold a valid Retail Sales and Use Tax Permit, Account No.______, issued pursuant to the Sales and Use Tax Law that I am engaged in the business of selling——that the tangible personal property described herein is not taxable. The resale certificate is in the name of——that the tangible personal property described herein is not taxable. The resale certificate is for resale and will be resold by me; provided, however, that in the event any such property is used for any purpose other than retention, demonstration, or display, while holding it for resale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay the tax measured by the purchase price of such property.

Description of property to be purchased:

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103 KAR 41:150. Cigarette subjobber licenses.

RELATES TO: KRS 138.130
STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 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. This administrative regulation establishes requirements for [provides guidance as it relates to the statutory requirements that] a cigarette "subjobber" to regularly supply Kentucky tax paid inventory to "retail locations." Section 1. Definition. "Retail location" means a place of business making any sales of cigarettes to the ultimate consumer, including premises upon which cigarettes are sold through vending machines and premises from where internet sales are made, but not sales for further distribution or processing.

Section 2. [As opposed to sales for further distribution or processing, including premises upon which cigarettes are sold through vending machines and premises from where internet sales are made.] A subjobber license shall be valid only for the location shown on the license. Each location of an applicant shall qualify separately and independently for a subjobber license.

Section 3. A subjobber may simultaneously act in a wholesale and a retail capacity, but the invoices, inventories, and sales records shall be separately maintained.

Section 4. [As.] A subjobber shall accept delivery of cigarettes at the wholesaler's place of business or the subjobber's licensed business location. A subjobber shall not have cigarettes delivered directly to the retailer by the wholesaler on his behalf.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 41:140. Circular relating to cigarette licenses and taxes.

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) [Kentucky law] requires administrative bodies, when promulgating statements of general applicability that implement, interpret or prescribe law or policy, to do so only through an administrative regulation. The Department of Revenue has many policies and circulars that pertain to the enactment of KRS Chapter 13A and conflict with, or are redundancies of, current tax laws. The purpose of this administrative regulation is [to formally rescind the previously-issued circular administered by the department's Office of Sales and Excise Taxes relating to cigarette licenses and taxes].

Section 1. Revenue Circular 73C455 merely restates or summarizes the requirements or provisions of the cigarette licenses and tax statutes of KRS Chapter 138 and applicable administrative regulations (KRS 138.130, 138.195, 138.205(5), 103 KAR 41.030, 41.040, 41.050, and 41.060) and is hereby rescinded and shall be null, void, and unenforceable.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 41:160. Unstamped cigarettes damaged in transit.

STATUTORY AUTHORITY: KRS 131.130(1), 138.140(7), 138.146(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes requirements for the proper disposal of unstamped and untax-paid cigarettes damaged in transit from manufacturers to Kentucky licensed resident wholesalers and Kentucky
Section 1. Definitions. (1) "Resident wholesaler" is defined by [mean, a Kentucky resident wholesaler as defined in] KRS 138.130(9).

(2) "Unclassified acquiring" is defined by [mean an unclassified acquiring as defined in] KRS 138.130(14).

Section 2. (1) All damaged cigarettes not accepted by the resident wholesaler or unclassified acquiring at time of delivery shall be reported to the Department of Revenue within twenty-four (24) hours after the transporter returns to his or her place of business.

(2) Notification may be mailed or hand-delivered in the form of:
(a) A letter to the Excise Tax Section, 200 Fair Oaks Lane, Frankfort, Kentucky 40620;
(b) A facsimile transmission (fax) addressed to the cigarette tax administrator at 502-564-3393; or
(c) An electronic mail message addressed to DOHWebResponseExciseTax@ky.gov.

(3) As part of its notification to the department of damaged cigarettes, the transporter shall also confirm its decision to either:
(a) Return the cigarettes to the manufacturer; or
(b) Destroy the cigarettes in the presence of a department representative.

Section 3. (1) Damaged cigarettes delivered to and accepted by the resident wholesaler or unclassified acquiring from the transporter shall be included as receipts to the resident wholesaler's or unclassified acquiring's monthly report.

(2) The resident wholesaler or unclassified acquiring shall select one (1) of the following methods for disposal:
(a) Stamp and sell the cigarettes;
(b) Return the cigarettes to the manufacturer; or
(c) Destroy the cigarettes in the presence of a department representative.

Section 4. The resident wholesaler or unclassified acquiring shall provide a copy of the credit documentation issued by the manufacturer to the department to verify the quantity of damaged cigarettes returned for each consignment or delivery returned to the manufacturer.

Section 5. (1) This administrative regulation shall replace Revenue Circular 73C459.

(2) Revenue Circular 73C459 is hereby rescinded and shall be null, void, and unenforceable.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 43:320. Policies and circulars relating to motor fuels taxes.

RELATES TO: KRS 138.210 to 138.448, 138.502
STATUTORY AUTHORITY: KRS 131.130(1), 138.226(1), 138.250

NECESSITY, FUNCTION AND CONFORMITY: 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. The department has issued policies and circulars, a number of which predate KRS Chapter 13A, that conflict with current tax laws or are redundant in light of other relevant legal authority expressed in those policies and circulars. This administrative regulation formally rescinds [The purpose of the administrative regulation is to formally rescind] the previously-issued circulars relating to taxes administered by the department's Office of Sales and Excise Taxes.

Section 1. The following circular merely restates or summarizes the requirements or provisions of the motor fuel tax statutes of KRS Chapter 138, cited below, and is hereby rescinded and shall be null, void, and unenforceable:
(1) Circular 72C142 (revised 10/4/96), relating to dealer non-highway special fuels use deduction (KRS 138.240(2)(g), 138.340, 138.990(6)).

Section 2. The following circulars are obsolete under the motor fuel tax statutes of KRS Chapter 138 cited below, and are hereby rescinded and shall be null, void, and unenforceable:
(1) 72C051 (revised 10/4/96), relating to motor fuels tax refund invoices and credits to licensed dealers (KRS 138.210(14), 138.341, 138.344(1), 138.348(1), 138.349, 138.445, 138.446, 138.351(1), 138.351(2), and 138.354); and

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: January 12, 2007 at 8 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)


RELATES TO: KRS 138.210, 138.220, 138.250
STATUTORY AUTHORITY: KRS 131.130(1), 138.226(1), 138.250

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 138.226(1) authorizes the department to promulgate administrative regulations necessary to administer gasoline and special fuel taxes. This administrative regulation prescribes the method of measurement of compressed natural gas in gallons as a special fuel.

Section 1. Definitions. (1) "Compressed natural gas" means natural gas compressed into high pressure fuel cylinders capable of being used to operate or propel any vehicle on public roadways.

(2) "Special fuels" is defined in KRS 138.210(4)(b) and includes compressed natural gas.

Section 2. Conversion Method. (1) For purposes of reporting the number of gallons subject to the tax imposed by KRS 138.220 as required by KRS 138.250, every special fuels dealer who manufactures compressed natural gas shall convert the quantity produced from pounds to gallons.

(2) The conversion rate used shall be 5.66 pounds of compressed natural gas to one (1) gallon of special fuels.

Section 3. (1) This administrative regulation shall replace Revenue Policy 72P105.

(2) Revenue Policy 72P105 is hereby rescinded and shall be null, void, and unenforceable.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007

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103 KAR 44:090. Policies and circulars relating to motor vehicle usage tax.

RELATES TO: KRS 138.450 to 138.470 [Chapter 138]
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: 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. The department has issued policies and circulars, a number of which predate KRS Chapter 13A, that conflict with current tax laws or are redundant in light of other relevant legal authority, resulting in needless uncertainty as to the validity of the information expressed in those policies and circulars. This administrative regulation formally rescinds [The purpose of this administrative regulation is to formally rescind and thereby formally rescind and shall be null, void, and unenforceable] the previously-issued policies and circulars relating to taxes administered by the department's Office of Sales and Excise Taxes.

Section 1. The following policies and circulars merely restate or summarize the requirements or provisions of the motor vehicle usage tax statute of KRS Chapter 138 and applicable administrative regulations cited below, and are hereby formally rescinded and shall be null, void, and unenforceable:

(1) Policies:
(a) Revenue Policy 71P015 (revised 12/1/86), relating to the computation of usage tax using the value of the vehicle on the date of registration or the date appearing on the transfer document (KRS 138.460 and 138.470(6));
(b) Revenue Policy 71P025 (revised 3/31/84), relating to credit for tax paid in another state by one (1) spouse, ex-spouse, parent, child, stepparent, steppchild, grandparent or grandchild allowed against the Kentucky usage tax when the other spouse, ex-spouse, parent, child, stepparent, steppchild, grandparent or grandchild registers an out-of-state motor vehicle in his or her name (KRS 138.460 and 138.470(6));
(c) Revenue Policy 71P071 (revised 11/30/92), relating to credit for tax previously paid when registering a motor vehicle that was previously registered in another state (KRS 138.460(6));
(d) Revenue Policy 71P090 (revised 6/1/83), relating to the reduction of the retail price of a used vehicle when more than one (1) used vehicle is traded-in on the vehicle being registered (KRS 138.450(10));
(e) Revenue Policy 71P085 (revised 12/1/86), relating to trade-credit allowed on used vehicles purchased in another state by a licensed Kentucky dealer that is registered in the dealer's name and subsequently traded to a Kentucky resident (KRS 138.450 and 138.470); and
(f) Revenue Policy 71P150 (revised 6/1/83), relating to transfers of used school buses (KRS 138.450 and 103 KAR 44:090).

(2) Circulars:
(a) Revenue Circular 71C172 (revised 12/1/90), relating to trade-in allowance (KRS 138.450);
(b) Revenue Circular 71C176 (revised 4/15/83), relating to "For Sale and Transfer" registrations (KRS 138.460);
(c) Revenue Circular 71C179 (revised 12/1/86), relating to vehicles that have been repossessed by a financial institution and repossessed by the debtor (KRS 138.470(13)); and
(d) Revenue Circular 71C189 (revised 4/15/83), relating to tax credit given to a Kentucky resident for a similar tax paid to another state (KRS 138.460).

Section 3. The following policies are not covered by statute and are being rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 71P040 (revised 6/1/83), relating to two (2) names on the same registration when transferred into only one (1) of those names; and
(2) Revenue Policy 71P050 (revised 6/1/83), relating to when usage tax is applicable and when it is refundable on the transfer of stolen vehicles.

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: January 12, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 44:100. Procedures for refund based on vehicle condition.

RELATES TO: KRS 138.450-138.470
STATUTORY AUTHORITY: 131.130(1), 138.450, 138.460
NECESSITY, FUNCTION AND CONFORMITY: KRS 138.460(12)(b) requires the Department of Revenue to promulgate administrative regulations to develop the forms and the procedures by which the owner of a motor vehicle may apply for a refund and document the condition of the vehicle under KRS 138.460(12)(a). KRS 131.130(1) authorizes the Department of Revenue to promul-

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gate administrative regulations for the administration of all tax laws. This administrative regulation establishes the procedures required for claiming and documenting a refund request for motor vehicle usage tax when the tax paid was based upon fifty (50) percent of trade-in value as provided in KRS 138.450(16)(a) and the actual condition of the vehicle at the time the tax was paid was less than fifty (50) percent of the trade-in value [paid on a motor vehicle based upon the retail price as defined in KRS 438.460(16)(a)].

Section 1. Definitions. (1) "Adjusted retail price" means, for (a) a motor vehicle subject to motor vehicle usage tax pursuant to the provisions of KRS 138.450(16)(a), [mean] the price based upon the following calculation:
   (a) Trade-in value based on the reference guide for the motor vehicle listed on the Vehicle Condition Refund Application (71A101);
   (b) Less the trade-in value based on the reference guide for an identical vehicle as defined in (a); and
   (c) Less any [paid] repair cost listed in the [Vehicle condition verification documents submitted to [Documentation] accepted by the department.
   (2) "Reference manual" is defined by KRS 138.450(23).
   (3) "Repair cost" means costs or estimates for parts or labor to return the motor vehicle to trade-in value or drivable condition and it does not include upgrading or Improving the vehicle beyond trade-in value condition.
   (4) "Vehicle condition verification documents" means original or copies of the following dated items:
      (a) Photographs of the vehicle indicating the condition of the vehicle [damage] supplied by the motor vehicle owner or Department of Revenue personnel. The photo shall show the vehicle damage and the VIN plate attached to the vehicle.
      Photos shall be taken by the owner or the Department of Revenue personnel;
      (b) Receipts for parts purchased for repair, Copies of receipts shall contain the name of the parts purchased, the price of the parts, the name, address, and telephone number of the business where purchased, and the date of purchase;
      (c) Repair cost estimate. Copies of estimates shall contain the VIN of the vehicle being repaired, the date the estimate was prepared, and the name, address, and telephone number of the estimator or
      (d) Repair cost receipt. Copies of receipt shall contain the VIN of the vehicle being repaired, the date the repair was done, the name, address, and telephone number of the vehicle repairer.
      (5) "Vehicle Identification Number" or "VIN" means the numbers, letters, or combination of numbers and letters assigned by the manufacturer or a governmental entity and stamped upon or otherwise affixed to a motor vehicle or motor vehicle part for the purpose of identification, but does not include the letters, numbers, or combinations on registration plates issued under KRS Chapter 195.

Section 2. Refund Application Process. (1) The owner of a motor vehicle who has paid the motor vehicle usage tax according to the provisions of KRS 138.450(16)(a) and requests a refund of a portion of the tax paid shall submit to the department a completed Vehicle Condition Refund Application (Form 71A101) with the following documents attached:
   (a) A copy of the owner’s Kentucky Registration Receipt (Form TC 96-181) for the vehicle;
   (b) A copy of the owner’s completed Application for Kentucky Certificate of Title/Registration (Form TC 96-182) for the vehicle; and
   (c) At least two (2) vehicle condition verification documents.
   (2) All documents submitted with the Vehicle Condition Refund Application shall include the VIN to identify the motor vehicle for which the applicant is requesting the refund.
   (3) The owner of the motor vehicle may utilize one of the department’s Taxpayer Service Centers to obtain photographs of the damaged vehicle and for submission of the Vehicle Condition Refund Application.

   Section 3. Refund Calculation Amount. (1) The department shall consider all refund requests based upon whether the condition of the motor vehicle at the time the motor vehicle usage tax was paid or evidenced by documentation provided to the department merits an adjusted retail price.
   (2) Any approved refund shall be the actual amount of tax paid less the tax due based on the greater of the ["adjusted retail price"] or the applicant’s purchase price as stated on the Kentucky Certificate of Title/Registration (Form TC 96-182).

Section 4. Refund Denial. Any incomplete or erroneous information on the Vehicle Condition Refund Application (Form 71A101) or the associated vehicle condition verification documents shall result in the denial of the refund. If the department has denied a refund request, the applicant may request a refund if additional information is made available [Denial of a refund request shall not prohibit the resubmission of a valid refund request].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Application for Kentucky Certificate of Title/Registration," Form TC 96-182, (January 2000);
   (b) "Kentucky Registration Receipt," Form TC 96-181, (August 1998); and
   (c) "Vehicle Condition Refund Application," Form 71A101, (August 2006).
   (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 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

[Section 6. The provisions of this Administrative Regulation shall be effective January 1, 2007.]

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: December 21, 2006 at 10 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, March 13, 2007)

103 KAR 44:120. Incorrect Statement of Origin or Certificate of Title.

RELATES TO: KRS 138.460
STATUTORY AUTHORITY: KRS [Chapter] 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: 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. This administrative regulation establishes the requirements relating to [is necessary to replace a rescinded policy on the topic of] taxes paid on a motor vehicle which has been registered under an incorrect statement of origin or other certificate of title.

Section 1. Definitions. (1) "Kentucky Certificate of Title" [(Form TC 96-146)] means a document of ownership issued by the Kentucky Transportation Cabinet as Form TC 96-180 which contains [but is not limited to] the following minimum vehicle information:
   (a) Date the Kentucky title was issued;
   (b) Vehicle identification number as assigned to the vehicle; and
   (c) Make and model of the vehicle.
   (2) "Motor vehicle usage tax" means the tax levied upon the
transfer of ownership of a motor vehicle pursuant to KRS 138.450
to 138.470.

(3) "Statement of Origin" means a document generated by the
manufacturer of a motor vehicle which contains, but is not limited to,
the following minimum vehicle information:
(a) Date the vehicle was manufactured;
(b) Vehicle identification number assigned to the vehicle; and
(c) Make and model of the vehicle.

Section 2. Correction of Transfer Record. (1) A motor vehicle
registered under an incorrect Statement of Origin issued by a
manufacturer or an incorrect Kentucky Certificate of Title issued by
the Kentucky Transportation Cabinet shall be registered using the
corrected Statement of Origin or the corrected Kentucky Certificate
of Title. Upon registration of the correct vehicle, the [appropriate
payment of] motor vehicle usage tax shall be paid.

(2) Since the motor vehicle usage tax was paid on both trans-
fers, a written request shall be filed with the Department of Reve-
 nue for a refund of the tax paid on the vehicle registered in error.

Section 3. Refund Application Process. The owner of a motor
vehicle who has paid the motor vehicle usage tax on a vehicle that
has been issued an incorrect Statement of Origin or incorrect Ken-
 tucky Certificate of Title shall submit in writing a refund request
indicating the reason for the request to the Department of Reven-
eue. (a) Authority to Cancel [and/or Refund], memorandum issued
by the Transportation Cabinet;
(b) A copy of the owner’s Kentucky Registration Receipt (Form
TC 96-181), for the vehicle which was incorrectly registered;
(c) A copy of the owner’s completed Application for Kentucky
Certificate of Title/Registration (Form TC 96-182), for the vehicle;
(d) If applicable, a copy of the owner’s incorrect Kentucky Cer-
tificate of Title (Form TC 96-180), under which the vehicle had
been previously registered [under]; and
(e) If applicable, a copy of the owner’s incorrect ["Statement of
Origin"], under which the vehicle had been previously registered
under.

Policy 71P110.
(2) Revenue Policy 71P110 is hereby rescinded and shall
be null, void, and unenforceable.

Section 5. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "Application for Kentucky Certificate of Title/Registration",
Form TC 96-132, (January 2000);
(b) "Kentucky Certificate of Title", Form TC 96-180, (May
2004);
(c) "Kentucky Registration Receipt", Form TC 96-181, (August
1995); and
(d) Authority to Cancel or Refund, March 2007.

(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 Fri-
day, 8 a.m. to 5 p.m.

[Section 5. (1) This administrative regulation shall replace Pol-
icy 71P110.
(2) Policy 71P110 is hereby rescinded and shall be null, void,
and unenforceable.]

JOHN R. FARRIS, Secretary
APPROVED BY AGENCY: November 8, 2006
FILED WITH LRC: January 12, 2007 at 9 a.m.

Section 1. Definition. "Game birds" means turkeys, quail,
phesant, chukars, grouse, waterfowl or other avian species nor-
maHy imported for propagation or for the purpose of hunting, shoot-
ing, training or field trial activities.

Section 2. Importation of Game Birds. (1) Before any live game
bird is imported into Kentucky, the person importing the bird or
birds shall obtain a transportation permit from the department.

(2) Transportation permits shall not be fee-free required for
the importation of any live game bird by facilities that are accredit-
ed by the American Zoo and Aquarium Association.

Section 3. Applying for Permits. (1) All applications for importa-
tion or transportation permits shall be made on the Standard De-
partment of Transportation Permit Application.

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

(3) The applicant shall also provide documentation that the
shipment is in compliance with the Department of Agriculture's
Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, January 2006 edition";
(b) "The Annual Transportation Permit Application, January 2006 edition";
(c) "The Individual Transportation Permit Application, January 2006 edition". [Standard-Department Transportation Permit Application, Revised 6/93, is incorporated by reference.]

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane [Game-Farm-Read], Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

MARK S. CRAMER, Deputy Commissioner
For: JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: January 11, 2007
FILED WITH LRC: January 12, 2007 at 10 a.m.
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) 564-5000.

DEPARTMENT OF AGRICULTURE
Office of Agriculture Marketing and Promotion
(Amended at ARRS, March 13, 2007)


RELATES TO: KRS 260.165, 260.166, 260.167, 260.168, 260.175

STATUTORY AUTHORITY: KRS 260.166(2)(c)(3), 260.167(3), 260.175(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.175(3) [260.175] authorizes the Kentucky Department of Agriculture, in collaboration with the Kentucky Grape and Wine Council (KGWC) and the Department of Tourism, to promulgate administrative regulations to administer the Kentucky Small Farm Wineries Support Fund and requires the establishment of standards for the use and distribution of these funds including reporting requirements. This administrative regulation establishes the necessary standards.

Section 1. Definitions. (1) "Fund" means any portion of the annual deposit from the general fund into the Kentucky Small Farm Wineries Support Fund outlined in KRS 260.175(2).
(2) "KGWC" is the Kentucky Grape and Wine Council established by KRS 260.165.
(3) "Local marketing cost-share program" is defined in KRS 260.175(2)(b).
(4) "Small farm winery" is defined under the provisions of KRS 241.010(44) [241.010(45)].
(5) "Wholesaler" means a licensed wholesaler as defined in KRS 260.175(2)(d) [as defined in KRS 260.175(2)(d)].

Section 2. (1) The Kentucky Small Farm Wineries Support Fund shall be maintained in four (4) unique accounts based on the statutory categories in KRS 260.175(2)(a) to (d) [260.175(2)].
(2) The KGWC shall approve all fund expenditures based on voting procedures set forth in their bylaws and shall authorize the Kentucky Department of Agriculture to disburse the funds pursuant to the provisions of Sections 3 and 4 of this administrative regulation.
(3) The annual report required by KRS 260.166(2)(f) shall contain a summary of all:
(a) Program activity;
(b) Participants; and
(c) Expenditures relating to the fund.
(4) The Kentucky Department of Agriculture shall assist in the:
(a) Management of reports;
(b) Program documentation; and
(c) Approval of [Approved] participants.

Section 3. The Wine Wholesaler Reimbursement Program. The funds in this program shall be dispersed based on the following criteria:
(1) The reimbursement rate for a wholesaler shall be twelve (12) dollars per case of wine produced by a small farm winery with a valid Kentucky license.
(2) To receive reimbursement, a wholesaler shall:
(a) Apply for participation in the reimbursement program on the "Application" and "Wine Approval Request" portions of the "Wholesale Reimbursement Program Application" prior to delivery of the wine;
(b) Request reimbursement on the "Reimbursement Request" portion of the "Wholesale Reimbursement Program Application" within ninety (90) days after the wine is delivered;
(c) Sell and deliver eligible wine for the same price as was purchased; and
(d) Provide a printed report to the KGWC that includes eligible wine purchase price, sale price, and proof of delivery.
(3) A wholesaler distributing wine pursuant to KRS 250.175(2)(d) shall not:
(a) Be reimbursed for any products of a small farm winery that is participating in an active marketing contract with a licensed wholesaler;
(b) Be required to undertake any marketing or promotional responsibilities for the KGWC approved wine; or
(c) Request or receive any reimbursement until the eligible wine is delivered.
(4) The annual fund shall be divided equally into two (2) biannual program periods.
(5) The availability of funds shall be a combination of the biannual portion and any unnumbered funds from the previous program periods.
(6) The KGWC shall:
(a) Mail a written notice of the new program period to all licensed small farm wineries each June and December, requiring the winery to confirm if it will have products participating in this program;
(b) Calculate a cap for the products of each participating small farm winery in January and July, based on the amount of funds available and the number of licensed wineries who confirm participation in the program period;
(c) Mail a written notice of the cap for the program period to all small farm wineries that is participating in this program and to all licensed wholesalers.
(7) Only a licensed Kentucky wholesaler may participate in this program.

Section 4. The Kentucky Grape and Wine Marketing Cost-Share Program. The funds in this program shall be dispersed based on the following criteria:
(1) The primary purpose of the expenditure shall be for the promotion or sale of Kentucky grapes, grape products, or wine.
(2) A small farm winery shall be eligible for reimbursement not to exceed fifty (50) percent of total qualified expenditures.
(3)(a) A small farm winery shall apply for participation in the reimbursement program on the "Application", "Advertising Plan", and "Budget Request" portions of the "Small Farm Winery Cost-Share Program Application";
(b) All expenditures shall be approved by the KGWC in advance;
(4) Eligible expenditures shall clearly display a small farm winery logo or name and be defined as:
(a) An Internet, print, radio, or television advertisement;
(b) A promotional item to be given away;
(c) Signage with permanent lettering or logo for a special event, tradeshow, farmers' market, or festival; or
(d) Uniform apparel that shall be worn by operators or employees.
(5) The following expenditures shall not be eligible for reim-
bursure from this fund:
   (a) Equipment without a primary purpose of advertising grapes
       or wine;
   (b) Blank or modifiable signage, electronics, or electronic me-
       dia products;
   (c) Blank paper products or ink;
   (d) Promotional items that do not permanently or clearly dis-
       play the small farm winery logo or name;
   (e) Food or wine products served at special events, trade-
       shows, farmers' markets, and festivals; or
   (f) Membership dues or registration fees.
(5) The annual fund shall be divided equally into two (2) bi-
   annual program periods.
(7) The availability of funds shall be a combination of the bi-
   annual portion and any unencumbered funds from the previous
   program periods.
(8) The KGWC shall:
   (a) Mail a written notice of the new program period to all li-
       censed small farm wineries each June and December requiring
       the winery to confirm if it will participate in the program;
   (b) Calculate a cap for each participating small farm winery in
       January and July, based on the number of licensed wineries who
       confirm participation in the program period and the amount of
       funds available.
   (c) Mail a written notice of the cap for the program period to all
       small farm wineries that confirm active participation in the program.
 (9) The applicant shall submit a request for reimbursement to
the KGWC within ninety (90) days of completion of the last ap-
proved expenditure on the "Expenditure Report" portion of the
"Small Farm Winery Cost-Share Program Application";
(10) A new small farm winery shall be eligible for funds in the bi-
annual program period following license approval.
(11) The Kentucky Department of Agriculture shall evaluate sub-
mitted applications on a monthly basis and submit a report to
the KGWC at regular meetings.
(12) The KGWC shall offer recommendations, approval, or
 denial of applications within two (2) regular meetings of report
 submission.

Section 5. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
   (a) "Wholesaler Reimbursement Program Application", 01/07
[ed]; and
   (b) "Small Farm Winery Cost-Share Program Application",
01/07 [ed].
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Department of
Agriculture, Office of Marketing and Promotions, 100 Fair Oaks
Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Fri-
day, 8 a.m. to 4:30 p.m.

RICHE FARMER, Commissioner
APPROVED BY AGENCY: January 2, 2007
FILED WITH LRC: January 4, 2007 at 4 p.m.
CONTACT PERSON: Mac Stone, Director, Division of Value
Added Plant Production, Office of Agriculture Marketing and Pro-
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EDUCATION CABINET
Office of Vocational Rehabilitation
(Amended at ARRS, March 13, 2007)


STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY, FUNCTION, AND CONFORMITY: KRS
151B.200 accepts and agrees to comply with federal vocational
rehabilitation acts, provides for a state rehabilitation agency and
sets eligibility criteria for vocational rehabilitation services. KRS
151B.195 requires [directs] the Executive Director, Office [Commissioner, Department] of Vocational Rehabilitation to promulgate
administrative regulations governing services, personnel, and ad-
ministration of the state rehabilitation agency. This administrative
regulation establishes [prescribes] general criteria for the provi-
sion of rehabilitation services and is necessary in order to distribute
limited funds available for that purpose. [The general criteria in the
administrative regulation set forth the regulatory policies.]

Section 1. Definitions. (1) "Applicant" means an individual who
has signed a letter or document requesting vocational rehabilitation
services and who is available to complete an assessment.
(2) "Department" means the Department of Vocational Reha-
bitation, and its appropriate staff members who are authorized
under state law to perform the functions of the state regarding the
state plan and its supplement.
(3) "Eligible individual" means an individual with a disability
who has been determined by an appropriate office [department]
staff member to meet the basic conditions of eligibility for voca-
tional rehabilitation services as defined in 34 C.F.R. 361.42.
(4) [4] "Legally blind" means an individual has a visual acuity of
20/200 or less in the better eye with correction or a visual field of
twenty (20) degrees or less.
(4) [69] "Occupational equipment" means equipment essential
to perform the job duties at the job site and required as a condi-
tion of employment.
(7) "Office" means the Office of Vocational Rehabilitation and
its appropriate staff members who are authorized under state law
to perform the functions of the state regarding the state plan and its
supplement.
(6) "Relative" means an individual related to another individual
by lineage, marriage, or adoption and includes a:
   (a) Spouse;
   (b) Parent;
   (c) Grandparent;
   (d) Brother;
   (e) Sister;
   (f) Son;
   (g) Daughter;
   (h) Grandchild;
   (i) Aunt;
   (j) Uncle;
   (k) Niece;
   (l) Nephew;
   (m) First cousin.
(7) "Visual Impairment" means an individual has a condition of
the eye which constitutes or results for the individual in a substan-
tial impediment to employment.

Section 2. Employees' Application for Services. (1) An em-
ployee who wishes to apply for rehabilitation services shall
advise the Director of Program Services or a designee.
(2) An applicant who is an employee and the employee [department]
shall adhere to the following procedures if the employee wishes to apply for rehabilitation services.
(3) The employee shall advise the Director of Program Ser-
vices or a designee of the intent to apply.
(4) The Director of Program Services or a designee and the
employee shall select a counselor to take the application. If practi-
cable, the counselor shall be located in an adjacent district to the
district in which the employee resides.

Section 3. Employees' Relatives' Applications for Services. An
employee shall not take an application or provide vocational reha-
bitation services to a relative. The relative shall be referred to the
Director of Program Services or a designee. The Director of Pro-
gram Services or a designee and the individual shall identify a staff
member who is not a relative to take the application and provide
services as deemed appropriate.

Section 4. Legal Fees. The office [department] shall not be
responsible for any fees incurred by an applicant or eligible individ-
ual for legal services.
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Section 5. Payment Rates for Purchased Services. (1) **A service vendor shall not** [if practicable, payment for nonemergency transportation services shall be based on a percentage of the regional-operated transportation networks' rates established by the Kentucky-Transportation Cabinet].

(2) **The office [department] shall ensure that a service vendor agrees to** not charge or accept from the applicant, eligible individual or a relative [family member] payment for services unless the amount of the charge or payment is previously known to and, if applicable, approved by the office [department].

(3) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services **shall** [are to] be provided.

Section 6. Potentially Terminal Illness. (1) **Services shall not be provided to individuals with a potentially terminal illness unless:***

(1) [a] There is a favorable medical prognosis for recovery; or

(2) [b] There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, staff shall seek a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. **The office [department] may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services.**

Section 8. Self-Employment Enterprises. The requirements established in this section [following] shall be met prior to planning for self-employment for an eligible individual.

1. An eligible individual shall [agree to] undergo appropriate assessment to determine work potential, including mental and physical abilities, and interests, aptitudes, personality traits and other pertinent characteristics.

2. An **eligible individual shall participate in provocational and small business training.** [The office [department] may require an eligible individual to undergo provoational training as needed to gain skills and knowledge and to complete small business training.]

3. An eligible individual shall obtain any [the] required license, permit, certificate, or lease, and [in all instances] be in conformity with all federal and state laws,[1] and local ordinances to commence an enterprise.

4. The office [department] may review Record-keeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until hire on any office [department] purchased equipment expires.

Section 9. Sex Change. Office [Department] funds shall not be used to pay for sex change surgery.

Section 10. Tools and Equipment. The **eligible individual shall return tools, equipment, and supplies to the office when no longer used for the employment outcome.** [The office [department] may recover tools, equipment, and supplies if the eligible individual fails to use the equipment for the pursuit and practice intended or upon the death of the eligible individual.]

Section 11. Training. Postsecondary training **shall** [may] be provided for an eligible individual pursuant to this section.

1. **Except as provided in subsection (2) or (3) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.** The Director of Program Services or a designee may make exceptions if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as defined in 34 C.F.R. 361.5(b)(16) [reasonable to achievement of the work-plan].

2. **The office shall [may]** provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreters, note-taking services, tutoring services).

3. **Other office [department] approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services **shall** [may] be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

4. Training shall not be purchased only from training facilities that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all applicable state and federal requirements.

5. Training shall be provided only to those in the employment outcome [the vocational objective level].

6. An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

Section 12. Computer Hardware and Software Purchases. (1) **Except as provided in subsection (2) of this section or in Section 13 of this administrator regulation, the office shall not purchase a computer, microcomputer, other hardware or software for the personal use of an applicant or eligible individual.**

(2) **The office shall [may] consider the provision or upgrade or replacement of computer hardware and software if:**

(a) [1] The equipment is essential to compensate for the limitations caused by the disability; or

(b) The equipment is required for the eligible individual to achieve or maintain a vocational objective of competitive employment; and

(c) One (1) or more of the following criteria are met:

1. The equipment is required for vocational preparation;

2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or

3. The equipment enables an eligible individual to become competitive with nondisabled employees performing the same duties.

Section 13. [Computer Upgrades or Replacements—A computer upgrade or replacement may be provided for an eligible individual if needed for obtaining and maintaining employment.]

Section 14. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.

(2) The office shall [may] approve a second time upgrade or replacement if [under the following conditions]:

(a) The eligible individual has demonstrated a two (2) year continuous work history and

(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.

Section 14. [14] Transplants or Implants. A transplant or implant procedure which is experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office [department].

Section 15. [14] [15] Vehicle Purchase. The **office [department] shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.**

Section 16. [14] [15] Visual Impairments. **An eligible individual with a secondary disability of visual impairment shall** [may] be served if another Impairment, other than visual, results in a [sees the] more substantial impediment to employment.
Section 5. [General] Vehicle Modification. (1) Modification of a van for an eligible individual determined by an office specialist to be unable to transfer independently into and out of an automobile shall not be authorized over the maximum cost of the automobile modification.

(2) A vehicle modification costing in excess of $5,000 shall not be approved unless the eligible individual:
(a) Completes a driver evaluation and vehicle modification assessment by an office specialist.
(b) Obtains a recommendation from an office specialist.
(c) Has a vocational objective of competitive employment.

(3) In two years of job placement.
(4) Modification of a van for an eligible individual who may have limited functional abilities in an automobile shall not be authorized over the maximum cost of the automobile modification.

(5) The office [department] may provide van modifications for eligible individuals determined by an office [department] specialist to be unable to transfer independently into and out of an automobile.

(6) Vehicle modifications in excess of $5,000 shall not be approved except on the recommendation of an office [department] specialist.

Section 8. [Computer Hardware and Software Purchases] The department shall not purchase a computer, microcomputer, desktop computer, or personal computing device for personal use by the eligible individual. The department may consider the provision or upgrade of a computer to the eligible individual who has been determined by an appropriate office [department] staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.4(a).

Section 9. [Office] The Office of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

Section 2. [Computer Hardware and Software Purchases] The department shall not purchase a computer, microcomputer, desktop computer, or personal computing device for personal use by the eligible individual. The department may consider the provision or upgrade of a computer to the eligible individual who has been determined by an appropriate office [department] staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

Section 3. [Office] The Office of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

Section 4. [Second Time Upgrades or Replacements] A computer upgrade or replacement may be provided for an eligible individual if needed for obtaining and maintaining employment.
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(a) The eligible individual has demonstrated a two (2) year continuous work history; and
(b) The eligible individual's employer attests that the modification is needed to maintain employment; and
(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.

Section 5. (6) [6] [9] Property Modification. (1) Permanent, non-recoverable modification to a private home, business, or property shall be an allowable expenditure if determined by an office specialist to be essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications established in 781 KAR 1:030, Section 2. The eligible individual shall [make every attempt to] use recoverable, nonpermanent modifications if possible or cost effective.

(2) Except as provided in subsection (3) of this section, property modifications in excess of $10,000 shall not be allowed.

(3) Property modifications in excess of $10,000 shall [may] be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification precludes [would preclude] the successful achievement of the employment goal.

RALPH CLARK, Executive Director
APPROVED BY AGENCY: December 14, 2006
FILED WITH AHC: December 15, 2006 at 11 a.m.
CONTACT PERSON: Sue G. Simon, Office of Legal Services, Education Cabinet, Box 757, Frankfort, Kentucky 40602-0757, phone (502) 564-4754, fax (502) 564-2851.

EDUCATION CABINET
Office for the Blind
(As Amended at ARR, March 13, 2007)

782 KAR 1:010. Kentucky Business Enterprises [Federal Vocational Rehabilitation Program].

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107b(5) requires the office to promulgate administrative regulations for the operation of the vending facility program. This administrative regulation establishes the operational requirements for the business enterprises program for the federal Randolph- Sheppard Vending Facility Program.

Section 1. Definitions. (1) "Active participation" means an ongoing process which is:
(a) Between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and
(b) [when] Does not supersede the office's final authority to administer the program.
(2) "Agreement" means a written contract entered into between the office and property management authorizing the establishment of a vending facility and setting forth the service obligations.
(3) "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.
(4) "Commissioner" means the commissioner of the Kentucky Department for the Blind.
(5) "Counselor" means a vocational rehabilitation counselor in the Office [Department] for the Blind.
(6) "Department" means the Department for the Blind which is the state licensing agency for the Randolph-Sheppard Vending Facility Program in Kentucky.
(7) "Director" means the Division Director of Kentucky Business Enterprises.
(8) "Eligible individual" means a consumer as defined at 782 KAR 1:020, Section (14) [who has met the criteria to receive vocational rehabilitation services from the office] [department].
(9) "Executive director" means the Executive director of the Kentucky Office for the Blind.
(10) [11] "KBE" means a division of the office established by KRS 163.470(11) [department].
(12) "Licensee" means an eligible individual who:
(a) Has successfully completed the KBE Vendor Training Program;
(b) Has been licensed to operate a KBE vending facility, and
(c) Is not [operating] managing a vending facility.
(13) [14] "Manager" means a vendor in a vending facility who is responsible for the facility's operation.
(15) "Mediation" means an informal option which allows a vendor to seek resolution of a dispute with an office [department] action which:
(a) Arises [arising] from the operation or administration of the vending facility program; and
(b) [which] Adversely affects the vendor.
(16) "Office" means the Office for the Blind which is the state licensing agency for the Randolph-Sheppard Vending Facility Program in Kentucky.
(17) "Seniority" means the accumulated period of time during which a vendor has operated KBE vending facilities.
(18) "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE Vendor Training Program leading to licensure.
(19) "Vending facility" means a food sales operation within the meaning of 34 C.F.R. 395.1(x) operated on state, federal, or private property under the auspices of KBE by a vendor.
(20) "Vendor" means a licensee operating a vending facility under terms of an agreement, permit, or contract relating to the vending facility.
(21) "Vendor agreement" means a written contract entered into between the office and a KBE vendor authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties with respect to the vending facility.

Section 2. Training and Licensure. (1) Eligibility Criteria.
(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes the criteria established in paragraph (b) of this subsection have been met.
(b) The applicant shall:
1. Meet a visual diagnosis of blind person as defined in the federal Randolph-Sheppard Act at 20 U.S.C. 107e(1) [section] and the definition of blind person [blindness] established in 34 C.F.R. 395.1(c);
2. Be a citizen of the United States;
3. Be certified that the consumer meets the general criteria of eligibility for vocational rehabilitation services from the office [department];
4. Have received a high school diploma or GED certification;
5. Have math skills at an eighth-grade level or above;
6. Have financial skills for operating a vending business;
7. Have verbal and communication skills;
8. Have public relations skills;
9. Have personal hygiene and appearance appropriate for meeting the public;
10. Be independent in performing daily living activities; and
11. Have mobility skills.
(2) KBE screening process for training program.
(a) The screening committee shall be composed of:
1. The KBE division director or designee;
2. The chair of the State Committee of Blind Vendors or designee;
3. A KBE vendor appointed by the chair of the State Committee of Blind Vendors; and
4. The Director of Consumer [Client] Services or a designee.
(b) A designee shall not be the counsel for the applicant.
(3) KBE Vendor Training Program.
(a) The KBE training shall provide on-the-job work experience and classroom instruction leading to licensure as a KBE vendor.
(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the State Committee of Blind Vendors to ensure that a trainee, upon completion of the program, [eae] demonstrate proficiency in all aspects of KBE vending facility operation.
(c) Upon successful completion of the training program, the office [department] shall award a vendor license to the trainees.

Section 3 KBE Vendor License. (1) License Conditions.
(a) A license to operate a KBE vending facility [facilities] shall be issued for an indefinite period of time.
(b) The office [department] shall provide management services and training to assist the vendor in fulfilling the terms of the agreement.
(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If information is obtained that the vendor is not meeting the operational standards established in Section 9 of this administrative regulation [vending facility is not meeting operational standards or the vendor is falling short of performance standards as determined by KBE], remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office [department] may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.
(d) The office [department] shall terminate the license of a vendor if, after affording the vendor the opportunity for a full evidentiary hearing, the office [department] finds that:
1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement; or
2. The vendor’s vision has improved so that the vendor no longer meets the definition of blind person [blindness] established in 34 C.F.R. 355.1(c) of the federal implementing regulations to the Randolph-Sheppard Act.
(b) Leave of absence.
(a) The office [department] may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons. After a written request with justification is approved by the director.
(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.
(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:
1. Resign from that vending facility; or
2. Be subject to termination of the vendor agreement to operate the vending facility.
(3) Resignation.
(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.
(b) Resignation from KBE shall result in loss of the vendor’s license with retention of all accrued seniority.

Section 4. Vendor Vacancy. (1) The office [department] shall determine that a vendor vacancy exists if:
(a) A new vending facility is established; or
(b) An existing vending facility manager’s position is vacant.
(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.
(3) If the manager’s position becomes vacant in a multivendor vending facility, the assistant manager shall assume the manager’s position. The assistant position shall be abolished.

Section 5. Vendor Appointment. (1) Announcement of vacancy.
(a) If a vending facility manager vacancy is identified, the director shall notify all licensees and vendors of the available position.
(b) Announcements of a vacancy shall be made in alternative formats and shall include the closing date and time by which bids shall be received by the director.
(c) Information on the vending facility’s operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.
(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.
(3) Selection.
(a) The director shall appoint a vendor to manage each vending facility.
(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of no fewer than three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.
(c) The selection process shall begin with compilation of the seniority of each bidder. Beginning with the bidder with the highest KBE seniority, the director and committee representatives shall review that bidder’s business practices as documented in the KBE vending facility files in such areas as:
1. Customer relations;
2. Cooperation with property management;
3. Cooperation with KBE staff;
4. Complaints and commendations;
5. Timely and accurate submission of monthly financial reports and set-aside payments;
6. Financial management;
7. Recordkeeping;
8. Audit reports; and
9. Nonnegotiable payments to KBE or suppliers.
(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder’s documented business practices with the requirements of the specific vending facility vacancy. If the bidder’s business practices are satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.
(e) If the bidder with the most KBE seniority is not offered the appointment under the terms of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.
(f) If two (2) or more bidders have equal KBE seniority, each bidder’s business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.
(g) Consideration of KBE licensees with no KBE seniority shall be based on:
1. KBE training test scores;
2. On-the-job training reports;
3. Formal education; and
4. Prior work history.
(4) Appointment. The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the event of nonresponse, the offer of appointment shall be rescinded and the director shall select a new appointee.
(5) Emergency appointment.
(a) The office [department] shall make an emergency appoint-
ment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process for a leave of absence, appointment of a manager to another vacancy, death, or health emergency, or other similar occurrence.

(a) A licensee placed by emergency appointment shall accure seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment and the expected duration of the appointment.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If a licensee is in "ready for employment" status and is placed as a manager of a vending facility, a saleable stock inventory shall be provided by the licensee's counsel on an initial (1) time basis not to exceed $5,000. This amount shall be paid to:

1. The stock wholesalers, inter-accounted to KBE if the initial stock at the vending facility is owned by KBE; or
2. The vendor exiting the vending facility.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee.

(c) Payment for additional stock, above the $5,000, needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock for the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make affordable monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the office's (department) representative.

The exiting vendor, through the BID process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as provided in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The exiting vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the exiting vendor after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The vendor shall make affordable monthly payments to KBE up to the value of the stock purchases.

Section 7. Vendor Administrative Remedies and Procedures (1) Mediation.

(a) Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b) Within fifteen (15) working days from the occurrence of an office (department) action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

(c) The office (department) shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within thirty (30) working days of the receipt of the request.

3. The mediation shall be held at a field (department) office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

(c) A representative of the office (department) who is authorized to bind the office (department) to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office (department) mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If a mutually agreed resolution is not obtained, the vendor may submit a request for [request] an evidentiary hearing within fifteen (15) working days of the unresolved mediation.

(2) Evidentiary hearing.

(a) If desired, a vendor shall request an evidentiary hearing in writing to the director within fifteen (15) working days

1. Of an unresolved mediation; or
2. From an office (department) action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(b) The office (department) shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision may request judicial review in accordance with the provisions of KRS Chapter 13B.

(d) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of [Commissioner of the Rehabilitation Services Administration in the United States Department of Education pursuant to 34 C.F.R. 395.13.

Section 8. State Committee of Blind Vendors. The State Committee of Blind Vendors shall be established to actively participate with the office (department) in the major administrative and policy decisions affecting the overall administration of the Randolph-Sheppard Vending Facility Program and to perform other functions consistent with 34 C.F.R. 395.14.

1. Election procedures. The office (department) shall provide for the biennial election of the State Committee of Blind Vendors consistent with procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14.

2. Meetings of the committee.

(a) The State Committee of Blind Vendors shall meet at least quarterly with the director or his designee in attendance. The announcement of the meeting, with the agenda as drafted by the committee chairperson and the director, shall be mailed to the committee members by KBE. Mailings shall be prepared in alternative format as necessary.

(b) The KBE staff shall record the official minutes of meetings and prepare and mail a copy of the minutes to all vendors after approval by the committee chair. The minutes may be mailed in alternative format as necessary.
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(c) KBE shall make committee meeting space available to the chairperson for business of the State Committee of Blind Vendors.

3. The director and committee chair shall develop an annual committee budget.

4. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee’s annual budget consistent with 200 KAR 2:006.

5. Additional meetings shall [may] be eligible for reimbursement with the approval of the KBE director or office executive director [department commissioner].

(d) The State Committee of Blind Vendors shall adopt bylaws, which shall be approved by the office [department].

Section 9. Vendors’ Rights and Responsibilities. A vendor shall:

1. Enter into an agreement with the office [department] for the operation of a Randolph- Sheppard vending facility under the auspices of KBE prior to beginning operation of a vending facility;

2. Operate the vending facility in accordance with accepted business practices and in compliance with all federal, state, and local laws, regulations, and ordinances applicable to the operation of the vending facility;

3. Maintain proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement, in a business-like manner. [Managers shall be on-site to assure compliance with the operational obligations specified in the permit or agreement for the vending facility.]

4. Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

5. Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;

6. Provide pest control and janitorial services as otherwise specified in the vendor agreement;

7. Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

8. Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

9. Clean, fill, and service machines and equipment daily to assure proper functioning and report promptly to KBE any needed repair of equipment;

10. Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the equipment;

11. Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office [department] has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

12. Cooperate with vending facility audits performed periodically at KBE expense;

13. Pay the monthly five (5) percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office [department] on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check; and

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

14. Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

15. Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

16. Utilize office [department]-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office [department] upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

17. Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office [department] on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

(a) Expendable supplies used in the vending facility;

(b) Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;

(c) Rental and commission fees paid to building management as stipulated in the vending facility agreement;

(d) Telephone and utility expenses of the vending facility;

(e) Pest control services;

(f) Delivery charges paid on resaleable stock;

(g) Janitorial services;

(h) Liability insurance;

(i) License and permits required by health departments;

(j) Employee wages; and

(k) Employee fringe benefits;

18. Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for personal use or charitable donation;

19. Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

20. Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

(a) Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall insure against any liability which may occur from the operation of the vendor or the vending facility or in connection with the premises; and

2. Pay workers’ compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor’s employees; and

21. Submit proof of insurance as required by this subsection to KBE. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage;

22. Not bind or obligate the office [department] or representative to an entity that the vendor is a legal representative, agency, or employee of the office [department];

23. Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

24. Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

25. Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

26. Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

27. Participate in training arranged and paid for by the office [department] as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the office [department] for vending facility management training;

28. Request access, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph- Sheppard Act, 20 U S C. 107 through 107f. The data may be made available in alternative format. At a vendor’s request, the office [department]
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shall arrange a convenient time for a staff member to assist in the interpretation of the data; and

(28) Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by certified mail. A response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file.

Section 10. Office [department] Rights and Responsibilities. The office [department] shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resalable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The office [department] shall:
   (a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;
   (b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment provided by KBE;
   (c) Approve or deny vendor requests for replacement equipment if justified;
   (d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor;
   (e) Approve requests, if justified, for vendor-purchased equipment;
   (f) Develop financial controls to ensure financial accountability of each vending facility;
   (5) Establish a five (5) percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and negotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or nonnegotiable checks;

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation;

(b) Provide, or cause to be provided, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the deficiency, the office [department] may require the vendor to utilize qualified bookkeeping services;

(8) Contract for periodic audits of each vending facility at office [department] expense;

(9) Inventory and establish the wholesale value of the on-hand resalable stock inventory if a vendor leaves a vending facility;

(10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resalable stock, valued and calculated at wholesale cost;

(11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;

(12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary;

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, regulations, vending facility service obligations, and generally-accepted business practices; and

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38 [and 782 KAR 1-060]. Identifiable personal information shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38 [and 782 KAR 1-060]. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within two (2) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be maintained by the office [department] consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Vending Facility Vacancy, February 2001; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [department] for the Blind, 209 St. Clair Street, P.O. Box 757, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN M. JOHNSON, Executive Director
APPROVED BY AGENCY: December 15, 2006
FILED WITH LRC: December 15, 2006 at 11 a.m.
NOTICE PERSON. Sue G. Simon, Office of Legal Services, Educator Cabinet, Box 757, Frankfort, Kentucky 40602-0757, phone (502) 564-4754, fax (502) 564-2951.

EDUCATION CABINET
Office for the Blind
(As Amended at ANRS, March 13, 2007)

782 KAR 1:020. Definitions [Definition of terms] for 782 KAR Chapter 1.

RELATES TO: KRS 163.470(10)
STATUTORY AUTHORITY: KRS 163.470(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470 requires the office [department] to establish and implement policies and procedures for carrying out the program of services for the blind. This administrative regulation establishes [to necessary to establish] definitions for the terms used in 782 KAR Chapter 1.

Section 1. Definitions. [As used in this chapter, unless the context otherwise requires]

(1) "Applicant" means an individual who
   (a) has requested vocational rehabilitation services in writing; and
   (b) is available to complete an assessment [submits an application for vocational rehabilitation services];

(2) "Communication" means the ability to comprehend, respond, and [effectively] exchange information through:
   (a) Spoken words;
   (b) Written words;
   (c) Sign language;
   (d) Braille;
   (e) Concepts;
   (f) Gestures; or
   (g) Another means.

(3) "Comparable benefits" means service, benefit or financial assistance available to a consumer [eligible individual] from a program other than the office [department] which meets, in whole or part, the cost of services to be provided under an individualized
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plan for employment [written rehabilitation program].

(4) "Consumer" means an individual [eligible-applicant-for vocational rehabilitation services];
(a) Who has a visual impairment and possible secondary disabilities;
(b) Whose impairment constitutes or results in a substantial impairment to employment, and
(c) Who may benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and
(d) Who has been determined eligible for vocational rehabilitation services by a counselor.

(5) "Consumer with a most significant disability" means a consumer whose:
(a) Impairment limits one (1) or more functional capacities in terms of an employment outcome; and
(b) Rehabilitation requires two (2) or more [multiple] services over an extended period of time.

(6) "Consumer with a nonsignificant disability" means a consumer whose:
(a) Impairment limits one (1) or more functional capacities in terms of an employment outcome; and
(b) Rehabilitation requires two (2) or more [multiple] services over a period of time.

(7) "Consumer with a significant disability" means a consumer whose:
(a) Severe Impairment [Impairment-seriously limits two (2) or more functional capacities in terms of an employment outcome; and
(b) Rehabilitation requires two (2) or more [multiple] services over an extended period of time.

(8) "Correction" means the best visual functioning using conventional eyeglasses or contact lenses as prescribed by an ophthalmologist or optometrist.

(9) "Counselor" means a vocational rehabilitation counselor of the office [department] who is responsible to maintain a counseling relationship with an applicant or [eligible individual] in order to:
(a) Determine eligibility;
(b) Approve and sign the individualized plan for employment mutually developed with the consumer;
(c) Authorize payment for services; and
(d) Apply each client's [individual] for-plan, coordinate and authorize an individualized written rehabilitation program of services.

(10) "Eligible individual" or "client" means an applicant for vocational rehabilitation services who:
(a) Is determined by the department to have a disability; and
(b) Needs vocational rehabilitation services to...

1. Prepare for;
2. Enter;
3. Engage in or...
4. Retain gainful employment.

(11) "Eligible individual with the most severe disability" means an eligible individual whose:
(a) Impairment-seriously limits four (4) or more functional capacities in terms of employment outcome; and
(b) Rehabilitation requires three (3) or more services.

(12) [42] "Interpersonal skills" means the ability to make and maintain a personal, family, and community relationship.

(13) "Office" is defined by KRS 163.480(1) (means the Office for the Blind).

(14) "Orientation and mobility [ability]" means the ability to travel independently to and from a destination in the community.

(15) [42] "Progressive visual disorder" means a visual impairment that is
(a) Not complete or fully developed at the time of medical diagnosis; and
(b) Predicted, medically, to increase in extent or severity.

(16) [43] "Self-care" means the ability to engage in activities of daily living [manage one's own situation] including:
(a) Personal grooming [Meal preparation];
(b) Home management [House cleaning]; and
(c) Health and safety needs.

(17) [44] "Self-direction" means the ability to independently plan, initiate, problem solve, organize, and carry out a goal-directed activity.

(18) [46] "Services" means any appropriate authorization for purchase [a good or service that is appropriate] to meet the vocational rehabilitation needs and to achieve the employment outcome of a consumer [of an individual].

(19) [46] "Work skills" means the ability to do a specific task required for a particular job.

(20) [47] "Work tolerance" means the ability to sustain the required level of functioning in a work-related activity, with or without accommodations.

STEPHEN M. JOHNSON, Executive Director
APPROVED BY AGENCY: December 15, 2006
FILED WITH LRC: December 15, 2006 at 11 a.m.
CONTACT PERSON: Sue C. Simon, Office of Legal Services, Education Cabinet, Box 757, Frankfort, Kentucky 40602-0757, phone (502) 564-4754, fax (502) 564-2951.

EDUCATION CABINET
Office for the Blind
(As Amended at ARRS, March 13, 2007)

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.470(3), [46]; 34 C.F.R. 361.48, 29 U.S. C. 706, 711, 723

STATUTORY AUTHORITY: KRS 163.470(5); —34 C.F.R. 361.48.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office [department] to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation establishes the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Communication. The office shall provide information to applicants and consumers using the most effective mode of communication for the consumer or applicant, including:
(1) Braille;
(2) Large print;
(3) Electronic format; or
(4) Augmentation communication devices, or the spoken language.

The office shall provide applicants and consumers the most effective mode of communication.

This includes but is not limited to:
(a) Braille;
(b) Large print;
(c) Electronic format; or
(d) Augmentation communication devices or the spoken language.

Section 2. [Assessment. — For the purposes of determining eligibility, assessment shall include:}
(a) [Self-report; (b) [Existing data from a qualified professional; (c) [A new report of measure deemed necessary-by-the-rehabilitation-specialist; (d) [Social-Work-Examination-or (e) Social-Work-Administration-of-a-visual-or-a-significant-visual-disability. (2) The office [department] may seek a second opinion, as needed, in [regarding the determination of an impairment] and the need for a rehabilitative service. (3) Under limited circumstances, extended evaluations may be necessary. Section 3.1 [2-] Vocational Goal. A service shall be provided in accordance with an individualized plan employment[written rehabilitation-program] that: (1) Emphasizes the determination and achievement of a positive employment outcome; and (a) Is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Emphasizes the: (a) Determination; and (b) Achievement of a positive employment outcome [vocational goal]; and (2) Is consistent with the consumer's [an individual's]: (a) Unique strengths; (b) Resources; (c) Priorities; (d) Concerns; (e) Abilities; (f) Capacities; (g) Interests, and (h) [inform-choic-e]. Section 3, 3.1 [3-] Vocational Training at Institutions of Post-secondary [Higher] Education. (1) A service provided at an institution of higher education shall comply with the provisions governing comparable benefits established in Section 15 [15] of this administrative regulation. (2)(a) Except as provided in paragraph (b) of this subsection, the amount paid by the office [department] for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education. (b) If the consumer's vocational goal requires [eligible-individual-1 is in] a degree program not offered by an in-state public institution,[the amount paid by the office [department] for tuition shall [max] shall be the amount charged for that degree program [after comparable benefits are applied]. (3) The office shall use the school budget, awards, and need analysis for costs of tuition and fees, books, supplies, room, board, personal expenses, and transportation prepared by the student financial aid office of the institution and shall negotiate with the consumer the allocation of those costs. The office shall use the school budget and need analysis for costs of tuition and fees, books, supplies, room, board, personal expenses, and transportation prepared by the student financial aid office of the institution and shall negotiate with the consumer and the allocation of those costs. (4) The office may [department shall] pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution. (5)(a) The consumer shall: (1) Maintain full-time status as defined by the institution; 2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; and 3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year. (b) All coursework shall facilitate the achievement of positive employment outcomes. (6) [4-] The office may [department shall] pay the cost of books, training [supplies], tools and other course material in accordance with: (a) The need analysis prepared by the student financial aid office of the institution; or (b) The actual cost of materials, if a need analysis is not available. (7) [5] [Except as provided in subsection (7) of this section, the consumer [eligible individual] shall maintain full-time status as defined by the institution. (a) Inconsistencies in the status of the consumer's unique strengths, abilities, and capabilities; (b) All coursework shall facilitate the achievement of positive employment outcomes; or (c) Less than full-time for one (1) semester is appropriate. If those hours are [unless a status of less than full-time is] needed to graduate in the current year. (8) [6] Except as provided in subsection (6)[9] of this section, by the end of the second term or semester and throughout each subsequent term or semester, a consumer [eligible individual] shall achieve the higher of: (a) An overall "C" grade average; or (b) Standing required for admission, licensure, or certification. (9) [9] An exception to a requirement established in subsection (5) or (6) (6) [of this section] shall [may] be granted if the consumer [eligible individual]: (a) Has a need or circumstance that renders him unable to meet the requirement; and (b) Notifies the counselor of the need or circumstance prior to a change of standing at the institution. (b) [Not-compromise-the-program] requirement that the employment objectives of the client be: (1) [5-] and (2) [At-tribut-able]; and (e) [Not be granted for the requirements established in subsection (5) and (6) of this section for a period beyond one (1) semester [year]. (g) The consumer [eligible individual] provide the counselor with a copy of course grades as soon as possible after the end of each term or semester. (h) [If a consumer [eligible individual] does not maintain the standards of this section, the counselor shall: (a) Terminate services at the institution of higher education; and (b) Simultaneously notify the consumer [individual] of the appeal procedure established in [section 782 KAR 1:040] [as described in the consumer handbook]. (i) A service terminated under subsection (g) of this section shall be reinstated if the consumer [eligible individual]: (a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or (b) Subsequently meets the standard under which the service was terminated. Section 4. On-the-job-training. On-the-job-training provided in private or public employment [other than within the department] shall be subject to the following conditions established in this section: (1) The consumer [eligible individual] shall receive at least minimum wage and be paid commensurate with the prevailing wages for the job; (2) The employer shall provide to the consumer [eligible individual] the same benefits and privileges that accrue to other [eligible] employee; (3) Prior to training, a written agreement shall be: (a) Completed by the counselor, describing the goals and objectives of the training consistent with the needs of the employer, including: 1. The length of training; 2. The skills taught; 3. Wages earned; and 4. Responsibility of the office; and 5. An understanding that the consumer [eligible individual] shall be hired permanently after successful completion of the training program; and (b) Signed by the:
1. Office [department]; and
2. Employer.

(4) The consumer [eligible individual] shall strive to make satisfactory progress in the training. The employer shall provide training reports in accordance with [the] agreement to the office [department]. Documenting the satisfactory or unsatisfactory progress of the consumer [eligible individual].

(5) The agreement for on-the-job training shall be terminated by the consumer [eligible individual], the employer, or the consumer [eligible individual] if the conditions of this section are not met.

Section 5. Work Experience [and Work Adjustment]. A program of work experience in private or public employment shall [may] [other than within the department] shall be provided according to the following conditions established in this section:

(1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience. If [when] used as a trial work experience, up to three [3] different experiences may be [are] allowed, but shall be completed within a year not to exceed a total of 520 work hours.

(2) The consumer shall at least receive minimum wage.

(3) A written agreement shall be completed by the counselor and [signed by the department and] employer or provider of services to designate:

(a) The length of the work experience;
(b) Skills taught;
(c) The number of hours to be worked each week;
(d) (f) The payment that the individual shall receive; and [or] [and]
(e) (g) Any payment to the provider by the office [department].
(3) (i) The employer or provider shall monitor the performance of the individual in work experience and make periodic reports to the counselor. [and]

(5) [4] The agreement may [work experience contract shall] be terminated by either party if the terms of the agreement are not being accomplished [the department if it is determined by the department, employer, provider, or individual that] [the work experience is not beneficial] [to the individual].

Section 6. Physical and Mental Restoration. (1) [4] An applicant or consumer [eligible recipient] shall choose a qualified specialist who:

(a) Is licensed in the particular field of practice to provide the approved physical or mental restoration services; and
(b) [wa] Accepts to agree to the office's allowable rate of payment.
(2) [and] The medical diagnosis and prognosis shall indicate and recommend necessary restoration services. The office may [maintain the right to] obtain a second opinion before agreeing to pay for any restoration services.

Section 7. Out of State Services. (1) [2] A rehabilitation [rehabilitation] service shall [may] [shall not] be provided outside the Commonwealth of Kentucky, if [unless]:

(a) The service meets the consumer's rehabilitation need;
(b) The service is more convenient for the consumer;
(c) The service is cost saving;
(d) The service is provided in a nearby out-of-state area routinely used for the convenience of the department;
(e) The out-of-state service shall be cost saving;
(f) The service is not provided in state; and [or]
(g) (f) The provision of an in-state service would delay service to a consumer [an eligible individual] at extreme medical risk.

Section 8. [7] Maintenance. (1) Maintenance shall [may] [shall not] be provided only if [unless] necessary to support and derive the full benefit of other rehabilitation services being provided. Maintenance shall be [not furnished] [supplement a consumer's responsibility to maintain his own residence and daily sustenance.

(2) Maintenance shall be provided:
(a) After other services have begun; and

(b) cease [thirty (30) days] after the consumer [eligible individual] has achieved an employment outcome and received the first paycheck [suitable employment].
(3) The office [department] shall not pay more for a consumer's [an eligible individual's] room and board at an institution of higher education than the highest rate for double occupancy at an In-state public institution.
(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 7 of 200 KAR 2.006.

(6) An eligible individual shall clearly designate a maintenance expense. The department shall not provide for maintenance identified as personal expenses or miscellaneous expenses.

Section 9. [6] Transportation. Transportation for a consumer [an eligible individual] shall be paid in accordance with the requirements established in this section following:

(1) Transportation by a public common carrier shall be in the most economical means available and in accordance with the transportation needs of the consumer [their needs].
(2) Private transportation by private vehicle shall not exceed [be at] the mileage rate established for a state employee in Section 7 of 200 KAR 2.006.
(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for a state employee in Section 7 of 200 KAR 2.006.
(4) The total cost of transportation allowed for commuting between home and campus for a consumer [an eligible individual] who attends an institution of higher education shall not exceed the rates of on-campus residence and board at the institution.
(5) Transportation for a consumer [an eligible individual] who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the consumer's [eligible individual's] home and the campus and total expense shall not exceed the school budget analysis for transportation.

(6) Transportation shall [may] [shall] include relocation and moving expenses if necessary for a consumer [an eligible individual] to achieve placement in employment.

Section 10. [9] Interpreter Services. Interpreter services shall be provided by qualified personnel:

(1) If sign language or an interpreter of tactile interpreting is a necessary means of communication for the consumer [individual]; and

(2) In conjunction with application and effective participation in other services.

Section 11. [10] Reader Services. Reader services shall [may] [shall be provided for a consumer [blind individual];

(1) If [a reading of] printed material in alternative format is not readily available through the volunteer recording services of the office [department]; and [or] [and]
(2) In conjunction with application for services and to participate effectively in other rehabilitation services.

Section 12. Rehabilitation [Assistive] Technology. (1) The office shall [may] obtain low vision devices for a consumer who is licensed or certified to prescribe and fit the device [Assistive technology] having the capacity to improve low vision shall be provided by an individual licensed to:

(a) Make an individual prescription and
(b) Perform an individual fitting.
(2) Assistive technology and adaptive devices recommended by an Assistive Technology Specialist shall be provided if necessary to improve the functional capabilities of the consumer in obtaining a positive employment outcome. [may] [shall] be provided if an assessment indicates it is necessary to improve the functional capabilities of the consumer and the consumer may use the equipment in obtaining a positive employment outcome. [there is] evidence that the eligible individual has the ability and capacity to successfully use assistive technology.
(3) Unusual or expensive assistive technology shall only be provided to an individual if use of a traditional aid or device is not feasible.
(4) A consumer [An eligible individual] shall return assistive
technology to the office if [whenever] it is no longer used [depar-
tment if it becomes unnecessary] for the purpose for which it was
provided.
(5) Assistive technology shall be:
(a) Provided in a new or like new condition; and
(b) Replaced or replaced by the office [department] if, during
the course of the individualized plan for employment [written-reha-
ilitation program], it becomes:
1. Defective;
2. Worn out; or
3. Obsolete.
(6) The repair, maintenance, or [and] replacement of the assist-
ive technology shall be the responsibility of the consumer following
closure or successful attainment of a positive employment outcome
unless necessary to maintain, regain, or advance in employment or
the Individualized Plan for Employment [IPE] includes extended
services at the time of closure. [Unless involved in a post-emplo-
ment service, the eligible individual shall have defective, worn out,
or obsolete assistive technology repaired or replaced after rehabilita-
tion.]

Section 13, [42] Self-employment. The office shall [may] ap-
prove [depart] shall participate in] a self-employment [program] for
a consumer [client] if:
(1) The consumer participates in [eligible individual and pro-
posed self-employment enterprise, under] a feasibility evaluation
and development of a business plan;
(2) The vocational goal is consistent with the consumer's
unique strengths, resources, priorities, concerns, abilities, capabil-
ties, interests, and informed choices;
(3) The consumer attempts to secure additional resources to
support the outcome; and
(4) The consumer [eligible individual]
(a) Obtains the required:
1. License;
2. Permit;
3. Certificate; or
4. Lease; and
(b) Operates the enterprise in conformity with federal, state,
and local statutes and regulations;
(5) The office's financial participation may be negotiated and
shall be limited by the allocation and expenditure of vocational
rehabilitation funds;
(6) The department has the option to review the proposed
recordkeeping system:
(a) Prior to establishment of the enterprise, and
(b) Periodically for up to five (5) years; and
(c) Except as provided in paragraph (b) of this subsection,
the department's financial participation in the enterprise does not
exceed $5,000.
(7) An exception to the limit established in paragraph (6) of
this subsection may be granted at the discretion of the director of
client services, with sufficient documentation supporting the vocational
goal of the eligible individual.

Section 14, [43] Tools and Equipment. The consumer [depar-
tment shall] return [recover] tools, equipment, and supplies
provided for employment if [when] [4-then] not use by the consumer
for that purpose [eligible individual] cease.

textbook or other vocational material shall be made available in alternative format through the office's Accessible text-
book services or other service providers [department's volunteer
record program].

Section 16, [45] Comparable Benefits. (1) When the individual-
ized plan for employment is developed, the consumer and voca-
tional rehabilitation counselor may negotiate applications for com-
parable services [if] an eligible individual is provided training ser-
\text{vices at an institution of higher education, he shall annually apply}
for comparable benefits available through the financial aid office of
the institution.
(2) The department shall maintain a cooperative agreement for
improved coordination of comparable benefits for an eligible indi-
\text{vidual enrolled in an institution of higher education with the:
(a) Kentucky Association of Student Financial Aid Administrators;
(b) Kentucky Higher Education Assistance Authority.}
(2) [34] Grant assistance, including a gift, endowment, or
scholarship not based upon merit, provided for a consumer [client]
enrolled in an institution of postsecondary [higher] education, shall be
considered a comparable benefit.
(3) [43] The following forms of financial assistance shall not be
considered a comparable benefit for a consumer [an eligible] indi-
\text{vidual enrolled at an institution of postsecondary [higher] educa-
tion:}
(a) A guaranteed student loan;
(b) A national direct or student loan;
(c) A work-study payment;
(d) Other aid termed as self-help; or
(e) An unrestricted monetary award from a cvoc, professional,
or social organization.
(4) [46] [Comparable benefits awarded for purposes of higher
education shall be applied to the services designated by the grant-
ing authority.
(5) For any consumer who receives social security income
benefits, one-third of the monthly award shall be applied toward
room and board for each month he attends school.
(6) [If] if there is not a clear designation, the award shall be pro-
brated by percentage to pay in part for the expenses of:
1. Tuition and fees;
2. Books and supplies;
3. Room and board;
4. Personal expenses, and
5. Transportation;
(e) The percentage used for distribution shall be the amount of
the award divided by the total expenses listed in paragraphs (b) of
this subsection.

Section 17, [46] Participation of a Consumer [individual] in the
Costs of Services. The financial need of an individual with a disa-
bility shall not be considered by the office [department] in the
provision of services although the consumer's participation shall be
encouraged.

Section 18, [47] Emergency Denial of Services. The office
[department] shall immediately suspend or terminate services pro-
vided to an individual if during the course of those services the
conduct of the individual poses a threat to personal safety or the
safety of others.

Section 19. A waiver to any limit established for the scope
and nature of services shall be made [is allowable] at the discretion
of the director of consumer services, with sufficient documentation
supporting the rehabilitation needs of the consumer.
(1) A request for a waiver shall [may] be submitted to the di-
rector by either the counselor or the consumer.
(2) A written discussion based upon the rehabilitation needs
of the consumer shall be provided to the counselor and consumer
within ten (10) working days of submission of the request.

Section 20, Order of Selection. If the executive director and
State Rehabilitation Council determine that the agency lacks avail-
able funds to serve all consumers, the office shall follow an order of
selection to give priority for services according to a ranking of
categories of consumers based on the severity of disability as fol-
\text{lows:}
(1) Priority Category One (1) which shall include those an individual with a most significant disability whose:
(a) Severe Impairment [Impairment—severely limits one three (3) or more functional capacities in terms of employment outcome; and
(b) Rehabilitation requires two (2) or more [multiple] services over an extended period of time.
(2) Priority Category Two (2) which shall include those an individual with a significant disability whose:
(a) Severe Impairment [Impairment—seriously limits two (2) or more functional capacities in terms of an employment
outcome; and
(b) Rehabilitation requires two (2) or more [multiple] services over an extended period of time.
(3) Priority Category Three (3) which shall include [means] a consumer with a non-significant disability whose:
(a) Impairment seriously limits one (1) or more functional capacities in terms of employment outcomes; and
(b) Rehabilitation requires two (2) or more services over a period of time.
(4) Priority Category Four (4) which shall include [means] all other consumers.
(5) [Section 18. Order of Selection (1) If the commissioner determines that the agency lacks available funds for all eligible individuals who apply for services, the department shall follow an order of selection to give service priority according to a ranking of categories of eligible individuals based on the severity of disability as follows:
(a) Priority Category One shall include an eligible individual whose:
1. Impairment seriously limits four (4) or more functional capacities in terms of employment outcomes; and
2. Rehabilitation requires three (3) or more services.
(b) Priority Category Two shall include an eligible individual whose:
1. Impairment seriously limits three (3) or more functional capacities in terms of employment outcomes; and
2. Rehabilitation requires three (3) or more services.
(c) Priority Category Three shall include an eligible individual whose:
1. Impairment seriously limits two (2) or more functional capacities in terms of employment outcomes; and
2. Rehabilitation requires two (2) or more services.
(d) Priority Category Four shall include an eligible individual whose:
1. Impairment seriously limits one (1) or more functional capacities in terms of employment outcomes; and
2. Rehabilitation requires two (2) or more services.
(e) Priority Category Five shall include all other eligible individuals.
(2) Priority for services shall be given to an eligible individual with a more serious impairment.
(3) The order of selection shall be implemented on a statewide basis.
(4) An eligible individual who is a public safety officer, as defined in 29 U.S.C. §706(2), shall receive priority for services with each priority category.
(6) The office [department] shall conduct an assessment to determine an individual's:
(a) Eligibility for vocational rehabilitation services; and
(b) Priority under the order of selection [selections].
(7) The order of selection shall not apply to the following:
(a) The acceptance of a.
1. Referral; or
2. Applicant;
(b) The provision of assessment services to determine an individual:
1. Eligibility for vocational rehabilitation services; or
2. Priority under the order of selection; or
(c) A consumer [An eligible individual] who is in the process of receiving services at the effective date of the order of selection.
(8) A consumer [An eligible individual] shall be immediately reclassified into a higher priority category if his level of impairment increases and is documented.
(9) In the order of selection, a consumer [an eligible individual] in a closed priority category shall be placed on a waiting list until the priority category is reopened.
(10) If vocational rehabilitation services cannot be provided to all consumers in a given category, a waiting list based upon the date of eligibility for vocational rehabilitation services shall be used within that category.
(11) If sufficient funds become available, the executive director and the State Rehabilitation Council shall [may] adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

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APPROVED BY AGENCY: December 15, 2006
FILED WITH LRC: December 15, 2006 at 11 a.m.
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:020. Change of status; discontinuance of business.
RELATES TO: KRS 341.070, 341.115
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. This administrative regulation establishes the requirement for [requires] subject employers to notify the division of any change of ownership or control of their business.

Section 1. A subject employer [employers] shall notify the Division of Unemployment Insurance within fifteen (15) days of any change in ownership or control of his [their] business, whether in whole or in part, or of the discontinuance of the [their] business.

ANDREW FRAUENHOFER
APPROVED BY AGENCY: December 5, 2006
FILED WITH LRC: December 13, 2006 at 9 a.m.
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:030. Employer contributions.
RELATES TO: KRS 341.260, 341.300
STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.260(1), 341.300(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.260(1) and 341.300(1) require the secretary to promulgate administrative regulations establishing the due dates for employer contribution payments. This administrative regulation establishes [sets] the due dates upon which employer contributions shall be payable to the division.

Section 1. (1) The initial due date for payment of contributions by an employing unit shall be the last day of the month following the close of the calendar quarter during which the employing unit first becomes a subject employer.
(2) [Thereafter.] Except as provided in Section 2 of this administrative regulation, the due date for contributions shall be the last day of the month following the calendar quarter for which they are payable.

Section 2. The due date for subsequent payment of contributions shall be:
(1) Extended if;
(a) A subject employer has erroneously paid contributions due under KRS Chapter 341 to another state or federal agency; or
(b) [or-if] An authorized representative of the division has misinformed an employer as to his liability or erroneously deter-
minded an employer's status on the basis of correct reports furnished to the division by the employer or his representative; and

(2) [In these cases, the due date shall be] The 20th day following the mailing date of the first notice issued to the employer advising him of any amount due the division.

Section 3. A contribution [Contribution] shall be considered paid as of the date on which it is [they are] received by the Division of Unemployment Insurance as established [defined] in 787 KAR 1:230.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:050. Social Security number required of employees.
RELATES TO: KRS 341.115, 341.150
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. This administrative regulation establishes the requirement that each worker engaged in covered employment [be] secure a Federal Social Security Account Number and report the number to the employing unit.

Section 1. Each worker engaged in covered employment for a subject employer shall procure a Federal Social Security Account Number and report the number to the employing unit.

Section 2. If a worker [Each worker who is] engaged in covered employment, for a subject employer, [who does not have] a Federal Social Security Account Number, the worker shall file an application for it [therein] not later than three (3) days after the first day on which the worker [he] is engaged in covered employment for a subject employer. An employer shall [It shall be the duty of each employer to] procure the appropriate form for application for a Social Security Account Number from the federal government and shall [be] furnish the application form to each worker engaged in covered employment in his employ who does not have [such] a number.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:070. Reasonable time for protesting claim.
RELATES TO: KRS 341.370(3)(4), 341.530(3)
STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.370(3), 341.530(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.370(3) and 341.530(3) require the secretary to promulgate administrative regulations establishing what constitutes reasonable time within which an employer shall protest a claim by a former worker. This administrative regulation establishes the requirements for determining reasonable time. [This administrative regulation defines the term 'reasonable time' within which an employer shall protest a claim by a former worker. If the employer is not the most recent employer he shall be given fifteen (15) days within which to protest if he has not received Form UI-412A, "Employer's Notice of Initial Claim" or "Employer's Notice of Reopened Claim".]

Section 1. (1) Except as provided in Section 2 of this administrative regulation, the reasonable time referred to in KRS 341.370(3)(4) or [and] 341.530(3) shall not extend beyond ten (10) days after the date of the first notice to the employer from the department that a claim has been filed.

(2) In computing this ten (10) day period, [a] The day following the date of mailing of the notice shall be considered the first day; and

(b) The date the employer's return notice is received by the department shall be determined as provided [as-defined] in 787
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:090. Unemployed worker's reporting requirements.

RELATES TO: KRS 341.350, 341.380, 342.360, 341.370
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes [grant] the secretary to promulgate administrative [the power and authority to adopt, amend, or rescind rules and] regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. The administrative regulation establishes [sets forth] the registration and reporting requirements that [of] the unemployed worker shall meet to draw benefits, [and] the date when [a] the claim shall be valid, [further sets out] the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if [when] the unemployed worker completes the registration process [form] by internet, telephone, or by reporting in person and answers all questions and makes all certifications required by the secretary.

(2) When an unemployed worker completes an initial application for benefits or reopened a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:
   1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;
   2. Unemployed because of a labor dispute in the establishment where he has been employed; or
   3. [Working part-time with a regular employer but who shall be eligible for partial benefits; and]
   4. [A member of a union which shall be responsible for securing future employment.]

(3) During any benefit year, an unemployed worker shall [may] be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or [and] Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete [provide the information and certifications required by the secretary to make a determination of the worker's benefit eligibility. The unemployed worker shall provide the declaration and certifications by:]
(a) An internet claim registration through the Web site provided by the agency for that purpose at https://uiclaims.des.ky.gov/benefits/;
(b) A telephone claim registration through the call center provided by the agency for that purpose;
(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) [ ]
(a) Complete an initial claim form by:
   1. Internet;
   2. Fax;
   3. Mail;
   4. Leave a message at the office.

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Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim in accordance with the procedures established in subsection (1) of this section, the claim shall be acted upon as soon as practicable. Provided, however, that if the claim is filed within 14 days of the worker's separation from employment, the claim shall be processed within 5 working days of receipt of the application.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The employer has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff.

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide;

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of employment will begin. (In addition to the options available in Sections 2 and 3 of this administrative regulation, an employer may file a claim on behalf of an unemployed worker using electronic means approved by the department.)

(e) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(f) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may (shall be permitted to) file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(a) The worker's classification as established in Section 1(2) of this administrative regulation;

(b) The worker's individual employment and earning his-
tive regulation establishes [cate-up] the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.
   (a) Any interested party wishing to appeal to a referee from a notice of determination, or from a notice of income tax refund intercept issued by the Department of Revenue (Cabinet) in full or partial satisfaction of an outstanding benefit overpayment shall file [may be filed] with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party’s intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2) [rule].

(b) An appeal to a referee shall be considered filed at the time it is received by the department as established [defined] in 787 KAR 1:230.

(2) Notification of hearings
   (a) Except as provided in paragraphs (b) or (c) of this section, the Division of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The division shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:
   1. A claimant’s inability to attend the hearing due to current employment;
   2. Medical emergency;
   3. Death of a family member; or
   4. Acts of God. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least ten (10) days before the date of hearing, specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of ten (10) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for good cause [some compelling circumstances], subject to the approval of the Division of Unemployment Insurance [referee].

(3) Disqualification of referees. A [No] referee shall not participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.

(4) Hearing of appeals.
   (a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence [same].

(b) The party to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee shall:
   1. [may] Decide the appeal on the basis of the [these] stipulations; or
   2. [may] Schedule a hearing and take further evidence [as he deems necessary].

(c) Except as provided in paragraph (d) of this section, the hearing shall be scheduled in person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:
   1. Create undue expense for any party;
   2. require any party to travel more than fifty (50) miles;
   3. Put either party or the referee at personal risk; or
   4. Create a security risk for the public or division staff.

[The hearing shall be scheduled and held at a place where the claimant may] [can] [attend without undue expense or inconvenience, giving consideration to the claimant's place of employment.]

ANDREW FRAUENOFFER
APPROVED BY AGENCY: December 5, 2006
FILED WITH LRC: December 13, 2006 at 9 a.m.
CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:110. Appeals.

RELATES TO: KRS 131.570(1), 341.420(2), 341.430(2), 341.440, 341.450(2)
STATUTORY AUTHORITY: KRS 151B.020, 131.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 135.020(3)(e) exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administra-
days prior to the date on which the evidence will be taken.
(c) The commission, at its discretion, may return any case or issue to a referee for the taking of additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall [thereupon] return the record to the commission for its decision [thereon].
(3) [The hearing of appeals by the commission on cases ordered removed to it from any referee.] Any case ordered by the commission to be removed to it from a referee [shall] be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.
(4) The determination of appeals before the commission.
(a) Following the conclusion of a hearing, the commission shall promptly issue a written decision, which shall affirm, reverse, modify, or vacate the decision of the referee, or present a separate finding of facts, decision and reasons. The decision shall be signed by members of the commission who heard the appeal.
2. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:
(a) Is a matter of first impression;
(b) Clarifies or defines the application of statutory language;
(c) Reverses a previous precedent; or
(d) Adopts a court decision.
3. A decision designated a precedent shall be binding on all lower levels of determination. Following the conclusion of a hearing, the commission shall preserve the written and record decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstances. Decisions designated as precedent shall be binding on all lower levels of determination.
(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.
(c) Copies of the decision shall be mailed to all interested parties.
(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may destroy the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.
(5) Reconsideration.
(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) [twenty (20)] days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission [may] grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as established [defined] in 787 KAR 1:230. [The commission shall respond to requests for reconsideration by mail within three (3) working days after receipt.]
(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court [if the application is denied].
(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. The manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit.
(1) Presentation of an appeal to the commission.
(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 341.430(2), or to appeal from a notice of income tax refund intercept issued by the Department of Revenue [Cabinet] in full or partial satisfaction of any outstanding contribution, interest or penalty assessment, [may] do so by filing with the commission, the division or its author-

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ized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2) [obsolete].

(c) An application or appeal shall be considered initiated and filed at the time it is received by the department as established [defined] in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraphs (b) or (c) of this section, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely or
2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;
2. Medical emergency;
3. Death of a family member; or
4. Acts of God. [Upon receipt of an appeal made under this section the commission shall promptly prepare an order to schedule the hearing to be held promptly to gather pertinent evidence. Notice thereof shall be mailed to all interested parties at least ten (10) days before the date of hearing specifying the time and place of hearing. The commission may, when the exigencies of the situation in its judgment require, set a date for hearing before the expiration of ten (10) days [seven (7)] days, or, if necessary, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the commission or its authorized representative.] (3) Appointment of commission representative. The commission may direct that any hearing be conducted on its behalf by an authorized representative. A representative shall not be provided, however, that no representative shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and his witnesses. The commission shall, if it deems it necessary to secure full information on the issue involved, require each party and his witnesses to produce and exhibit their documents. The commission may take any additional evidence which it deems necessary,[ but if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.] (same).

(b) The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing. The commission shall

1. [may] Decide the appeal on the basis of the [the] stipulation; or
2. [may] Schedule a hearing and take further evidence [as it deems necessary].

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;
2. Require any party to travel more than fifty (50) miles;
3. Put either party or the referees at personal risk; or
4. Create a security risk for the public or division staff.

[The hearing shall be scheduled and held at a place where the party may [can] [attend without undue expense or inconvenience].

(d) The hearing may be conducted via teleconference if circumstances warrant.]

(e) The commission may [in its discretion] grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing, shall provide [must] [immediately] mail copies of the documents to the commission and to the opposing party prior to the hearing in sufficient time for the evidence to be received. Failure to provide both the commission and the opposing party with copies of this evidence shall [may] result in its being excluded from the record.

(5) Decisions.

(a) Following the conclusion of a hearing, the commission shall promptly set forth in writing its finding of the facts, its decision and reasons for the decision. If [therefore-provided, however, that if the applicant fails to appear and prosecute his appeal, the commission may summarily affirm the administrative determination or notice of income tax refund intercept from which the appeal was made. The decision shall be signed by the members of the commission who considered the appeal.

b. The commission may designate a decision a precedent for future cases of similar circumstances if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedent commission decision;

d. Adopts a court decision.

A decision designated a precedent shall be binding on all lower levels of determination. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstances. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may destroy the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450. [The mechanical recording of the hearing shall be retained by the commission pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.]

(e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The question of whether a decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission shall [may] grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as established [defined] in 787 KAR 1:230. [The commission shall respond to the requests for reconsideration by mail within three (3) working days after receipt.]

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

Section 4. General Rules for Referee and Commission Appeals. (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance [hereafter setting forth the substance of the anticipated proof to be obtained and the need for the proof [therefore].]

(2) Appeal record. All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written,
sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(3) Supplying information from the records of the Division of Unemployment Insurance. Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for information shall state, as clearly as possible, the nature of the information desired. [Nothing in the administrative regulation shall prevent] An interested party or his representative may examine [from examining] a record in the possession [have] of a referee, the commission or its authorized representative at a hearing.

(4) Conduct of hearings. All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in a manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date [thereof], request a reopening.

(b) The request shall:

1. Be granted if the party has shown good cause for his failure to appear;

2. [The request shall] Be in writing;

3. [Also] Set forth the reasons for the [the] failure to attend the scheduled hearing; and

4. [The request shall] Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a testimony (tapes) to interested parties. (a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the decision.

(b) There shall be no charge for this service. [However,] Parties shall [should] forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may destroy the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

ANDREW FRAUENHOFER
APPROVED BY AGENCY: December 5, 2006
filed with LRC: December 13, 2006 at 9 a.m.
Contact Person: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:140. Unemployment Insurance fund payments.

RELATES TO: 341.500, 341.510

787 KAR 1:150. Interstate claimants.

RELATES TO: KRS 341.145, 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. This administrative regulation establishes [sets] the procedure to be used between the Division of Unemployment Insurance, the treasurer of the unemployment insurance fund, the Finance and Administration Cabinet and the Secretary of the Education Cabinet [for-Workforce-Development] for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for the action signed by the Director of the Division of Unemployment Insurance or a person designated by the commissioner [commissioner] and approved by the Secretary of the Education Cabinet [for Workforce-Development].

Section 2. Requisitions from the state's account in the Unemployment Trust Fund shall be made by the treasurer within twenty-four (24) hours after the receipt of a written order for the requisition signed by the Director of the Division of Unemployment Insurance or a person designated by the commissioner [commissioner] and approved by the Secretary of the Education Cabinet [for-Workforce-Development]. Withdrawals, if [when] effected, shall be deposited in the benefit account.

Section 3. (1) A [computerized tape-and] benefit payment register for the payment of benefits shall be prepared and presented to the treasurer and certified as correct to the Finance and Administration Cabinet [the Department of Administration and Budget] by the Director of the Division of Unemployment Insurance or a person designated by the commissioner [commissioner] and approved by the Secretary of the Education Cabinet [for-Workforce-Development]. The [computer-tape and] benefit payment register shall show:

(a) The claimant's name;

(b) The claimant's Social Security account number;

(c) The amount of payment to be made;

(d) The period of time for which payment is made;

(e) The check [serial] number and the date of issuance; [and,]

(f) The program type; and

(g) The claimant's earnings. [Other information that from time to time shall be deemed necessary for proper control.]

(2) After approval by the Secretary of the Finance and Administration Cabinet, the secretary shall present to the treasurer of the unemployment insurance fund a warrant for the issuance of benefit payment vouchers. Upon presentation, the treasurer shall issue benefit payment vouchers with his signature affixed thereto and they shall become a demand upon the depository bank for payment of the amounts specified on the vouchers [thereon].

ANDREW FRAUENHOFER
APPROVED BY AGENCY: December 5, 2006
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:150. Interstate claimants.

RELATES TO: KRS 341.145, 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administra-
five regulations necessary to administer KRS Chapter 341. KRS 341.145(1) provides that the secretary may enter into arrangements with other states for the provision of services to unemployed workers. KRS 341. 380(1) provides that benefits shall be paid in accordance with administrative regulations promulgated by the secretary. The administrative regulation governs the division in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. (The following administrative regulation shall govern the secretary in his administrative cooperation with other states adopting a similar administrative regulation for the payment of benefits to interstate claimants.)

Section 2. Definitions. (1) "Agent state" means a state from which an individual files a claim for benefits payable by another state.

(2) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of a foreign state.

(3) "Interstate benefit payment plan" means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant" means an individual, including an interstate combined wage claimant, who claims benefits under the unemployment insurance law of one (1) or more liable states from an agent state and (The term interstate claimant shall not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that:

(a) Kentucky is the liable state; and

(b) The individual is not seeking employment in Kentucky [the exclusion would create undue hardship on claimants in specified areas].

(5) "Liable state" means a foreign state against which an individual files a claim for benefits if (when) filed from another state.

(6) "State" means one of the fifty (50) states in the United States of America, or (includes) Canada, the Virgin Islands, Puerto Rico, or the District of Columbia.

Section 2. The secretary shall apply the terms of the interstate benefit payment plan in his administrative cooperation with other states that have similar administrative provisions in effect for the payment of benefits to interstate claimants.

Section 3. Kentucky as liable state. An interstate claimant filing against Kentucky as the liable state shall follow the procedures for filing a claim and for claiming benefits as established in 787 KAR 1:090, Sections 2 and 3. (2) "Week-of-unemployment" includes any week of unemployment, as defined in the law of the state from which benefits are paid, with respect to the week that is claimed. (3) As used in this administrative regulation, unless the context clearly requires otherwise: (i) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(2) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that the exclusion would create undue hardship on claimants in specified areas.

(3) "State" includes Puerto Rico and the District of Columbia.

(4) "Agent state" means any state in which an individual files a claim for benefits from another state.

(5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(6) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(7) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

Section 3. Initial- and Reopened-Claims for Benefits. (1) In order for an interstate claimant to file an initial or reopened claim for benefits, he shall provide the information and certifications required by the secretary to make a determination of the claimant's benefit eligibility. The interstate claimant shall provide the information and certifications by:

(a) Internet claim registration through the Web site provided by the agency for that purpose;

(b) Telephone claim registration through the call center provided by the agency for that purpose.

(2) If any issues regarding the unemployed worker's eligibility as defined in KRS 341.265 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding investigation shall be conducted at which time the claimant may present all facts of his application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the interstate claimant files his claim as set forth in subsection (1) of the section.

(4) Upon the presentation by the interstate claimant of reasons found to constitute good cause for failure to file an earlier date, the secretary may authorize the backdating of an initial or reopened claim to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which the claim was filed.

Section 4. Registration for Work. (1) Each interstate claimant filing against Kentucky as the liable state shall be registered for work, through any public employment office in the state when and as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of KRS 341.350(1) if [the liable state-] proof of registration in the agent state is (shall be) provided to the liable state by the interstate claimant.

(2) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

Section 5. [4. Benefits Rights of Interstate Claimants. (1) If a claimant files a claim against any state, and it is determined by each state that the claimant has available benefit credits in that state, then claims shall be filed only against that state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this administrative regulation, benefit credits shall be deemed to be unavailable if benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or if benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of an interstate claimant [claimants] established by this administrative regulation shall apply only with respect to a new claim (notice claims-noise) of unemployment.

Section 6. Continued Claims for Benefits. (1) In order for an interstate claimant who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall provide the information and certification required by the secretary to determine the interstate claimant's eligibility for benefits as defined in KRS 341.360, 341.365, and 341.370. The interstate claimant shall provide the information and certification:

(a) Through the Web site provided by the agency for that purpose;

(b) By telephone through the interactive voice response system provided by the agency for that purpose.

(2) An interstate claimant shall report on a weekly or biweekly basis as determined by the secretary.

(3) If the interstate claimant is reporting on a weekly basis, his continued claim for benefits shall cover the week of unemployment immediately prior to the date on which the continued claim is filed.
(b) If the interstate claimant is reporting on a biweekly basis, his continued claim or benefits shall cover the two (2) weeks of unemployment immediately prior to the date on which the continued claim is filed.

(1) Claims for Benefits.—(1) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate-Benefits Payment Plan.

(2) Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustment required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(3) Claims shall be filed in accordance with agent state administrative regulations for interstate claims in local employment offices, or at an agent point, or by mail.

(a) [With respect to a claim] [claims] [for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week][or one (1) reporting period][date][if a claimant files more than one (1) week][reporting period] [date], an initial or reactivated or reinstated claim shall [must] [be used to begin a claim series and] [to] [continue a continued claim for a past period shall not be accepted.]

(5) Upon the presentation by the interstate claimant of reasons constituting good cause for failure to file at an earlier date, the state agency may make an adjustment of the period of the covered unemployment to cover a week or weeks of unemployment ended not earlier than fourteen (14) days prior to the date on which the claim is filed.

(4) The secretary may direct an individual to file his continued claim by mail. A continued claim shall cover the week or weeks indicated on the continued claim form incorporated by reference in administrative regulation 787 KAR 1:000. Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked, as defined in administrative regulation 787 KAR 1:000. The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail and, unless the claim is filed within the time prescribed herein, it shall not be accepted.

(6) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to the claims of the liability of the agent state.

Section 6. Determination of Claims. (1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's eligibility for benefits under the liable state's unemployment compensation law and the employability of the claimant to obtain suitable work in the liable state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

Section 7. Appellate Procedure. (1) If Kentucky is the agent state, it shall afford all reasonable cooperation in taking of evidence [and the holding of hearings] in connection with appealed interstate benefit claims on behalf of the liable state.

(2) With respect to the time limits imposed by KRS 341.420(2) [the law of the liable state] upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Kentucky on the date [the liable state on the date when] it is received by any qualified officer of the agent state.

Section 7. [181] Failure to Comply with Administrative Regulations. The provisions of 787 KAR 1:090, Section 6, shall apply to interstate claimants. If the secretary finds that the failure of an interstate claimant to file a claim for benefits or benefits for work within the specified time was due to the failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or the failure by the division's personnel to discharge necessary responsibilities, the interstate claimant shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that a claim shall not be allowed to be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

ANDREW FRAUENHOFER
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)
787 KAR 1:170, [Cash] value of board and lodging[board lodging provided for convenience of employing unit].

RELATES TO: KRS 341.030, 341.190, 28 U.S.C. 119
STATUTORY AUTHORITY: KRS 1518.020, 341.030(1), 341.190.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.030(1) requires the promulgation of an administrative regulation to establish the procedures for determining the reasonable cash value of remuneration other than cash paid for employees' services. This administrative regulation establishes the value of board and lodging, which involves determining if the items are paid in lieu of wages received by the worker and not specified under the contract of hire or if they are provided for the convenience of the employer and not held to be wages. This administrative regulation sets forth the reasonable cash value of board and lodging when they are in lieu of wages received by the worker and are not specified under the contract of hire. This administrative regulation also sets forth the conditions under which board and lodging shall be considered to have been provided for the convenience of the employer and not held to be wages.

Section 1. Except as provided in Section 2 of this administrative regulation, board, lodging, or any other payment in kind received by a worker in covered employment from his employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be:

(1) [Deemed to be wages paid by his employing unit](1) and

(2) [shall be] [Included in the gross wages reported for that worker by his employing unit for the purpose of computing contributions due under KRS 341.160 (the law).

Section 2. Board or lodging shall not be considered wages if the board or lodging is furnished to a worker for the convenience of the employing unit in accordance with the following requirements:

(1) [Board and lodging furnished to a worker for the convenience of the employing unit shall not be considered wages. For the purpose of this administrative regulation, the convenience of the employing unit shall be determined as follows:]

(a) The employing unit shall have a business reason for providing the board or lodging;

(b) The board or lodging shall be provided on the employing unit's business premises or in a location where the business of the employing unit is routinely conducted; and

(c) [With respect to board, if more than half of an employing unit's workers are furnished meals for the convenience of the employing unit as defined in (a) and (b) above, then all meals](the law).
Section 3. (1) In determining the reasonable cash value of board or lodging furnished to a worker, an employing unit shall:
(a) Use the fair market value of the board or lodging in the location provided; and
(b) Not determine the fair market value to be less than the values established in Section 4 of this administrative regulation.

(2) If the commissioner determines that the cash value assigned by an employing unit for board or lodging does not reflect fair market value, the commissioner shall determine the fair market value, which shall not be less than the values established in Section 4 of this administrative regulation. In determining the reasonable cash value of board and lodging furnished to a worker, an employing unit shall use the fair market value of the board and lodging in the location where provided, but not less than the value prescribed in Section 4 of this administrative regulation. If the commissioner determines that the cash value assigned by an employing unit for board and lodging does not reflect fair market value, he may determine the cash value but not less than the values prescribed in Section 4 of this administrative regulation. The commissioner shall determine or approve the cash value of the payments involved, and the cash value shall be used in determining the wages paid to a worker in employment and in computing contributions due under the law.

Section 4. (1) If [3. Where a money value for board or lodging or both furnished an individual in covered employment is agreed upon in a contract of hire, the amount agreed upon shall; if more than the rate specified by the commissioner, [commission] or the rates prescribed herein, be deemed the cash value of the board and lodging if the amount exceeds the money value established in subsection (2) of this section.

(2) The fair market value of board or lodging furnished in addition to money wages shall not be; if in a given case a rate for board and lodging is determined by the commissioner [commission]; board and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full board and room weekly</td>
<td>$110</td>
</tr>
<tr>
<td>Meals per week</td>
<td>$50</td>
</tr>
<tr>
<td>Per day</td>
<td>$10</td>
</tr>
<tr>
<td>Per meal</td>
<td>$4</td>
</tr>
<tr>
<td>Lodging per week</td>
<td>$50</td>
</tr>
</tbody>
</table>

ANDREW FRAUENHOFER
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FILED WITH LRC: December 13, 2006 at 9 a.m.
CONTACT PERSON Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:190. Employer’s records.

RELATES TO: KRS 341.115, 341.190
STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.190(1)

NECESSITY, FUNCTION, AND CONFORMITY
KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.190(1) requires employers to maintain and to make available for inspection those employment records that the secretary determines are necessary for the effective administration of KRS Chapter 341 [the chapter]. This administrative regulation establishes the record-keeping requirements for an [sets-forth the records that shall] [must] be maintained by each employing unit with respect to covered employment and the length of time that the records shall [must] be kept.

Section 1. Each employing unit shall establish, maintain and preserve for not less than six (6) years records with respect to covered employment performed in its service. The [which] records shall show:
(a) For each pay period:
(i) The beginning and ending date of the pay period;
(ii) The total amount of wages paid for covered employment in the pay period; and
(iii) The largest number of workers in covered employment in any one (1) day of each calendar week.
(b) For each worker:
(i) The name and social security account number;
(ii) The wages paid, showing separately cash payments, the reasonable cash value of remuneration in any medium other than cash, the date on which the payments were made, and the pay period during which the services were remunerated were performed. If the remuneration is in a medium other than cash, show the nature and amount of the remuneration; and
(iii) The total wages payable for each calendar quarter.
(c) The date on which the employee was hired, rehired, or returned to work after a termination of employment, and the date on which the employee was separated from covered employment.

Section 2. Each employing unit shall establish and maintain for not less than two (2) years [certain] additional records for each worker in its employ.
(a) The records shall be maintained on a calendar week basis, except that, if the employing unit is operating on a seven (7) day pay period basis, the required individual records may be maintained on the basis of the [such] employing unit’s seven (7) day period. The records shall show for each such period:
(i) The amount of wages earned;
(ii) The number of hours worked;
(iii) The number of hours of additional work available which was not accepted; and
(iv) The rate of pay for the additional work.
(b) Each employing unit shall upon request furnish to the Division of Unemployment Insurance or to a worker a certification of the wages earned and the hours worked, the number of hours of additional work available but not accepted, and the rate of pay for the additional hours of work during the week of unemployment for which the worker claims benefits. This information shall be available by the employing unit not later than seven (7) days after the last day of the seven (7) day period to which the records apply. Any employing unit failing to grant the certification within the specified time shall not [be permitted to] subsequently contest the amount of benefits paid for the week of unemployment.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
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787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.415(1)

NECESSITY, FUNCTION, AND CONFORMITY
KRS
341.115(1) authorizes [grants] the secretary to promulgate [the power and authority to adopt, amend, or rescind] [such rules and] administrative regulations [deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.415(1) limits recoupment and recovery in cases of benefits overpaid as a result of "office [departmental] error". [The purpose of] This administrative regulation establishes [is to delineate] the actions and instances which shall constitute "office [departmental] error" for the purpose of recovery and recoupment.

Section 1. The following shall constitute "office [departmental] error" in the payment of benefits:
1. Errors in computing the benefit rate;
2. Incorrect weekly payment due to a failure to consider deductible amount that was properly reported by a claimant;
3. Payment beyond the expiration of the benefit year;
4. Payment in excess of the maximum benefit amount;
5. Payment under an incorrect program status [i.e., [i.e.]} [program adjustment made] [on] [be made];
6. Retroactive notice of nonmonetary determinations, except a determination that the claimant has committed fraud shall not be considered office error:
   a. Monetary readjustments;
   b. Payment during a period of disqualification;
   c. Payment to a wrong claimant;
   d. Enforced payments resulting from a malfunction of automatic data processing equipment provided the malfunction is the result of human error in the data entry process.

Section 2. Overpayments that result from office [departmental] error shall not be subject to the filing of a lien.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARR, March 13, 2007)


RELATES TO: KRS 341.270, 341.272
STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.270(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes [grants] the secretary to promulgate [the power and authority to adopt, amend, or rescind] [such rules and] administrative regulations [deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.270(3) requires the Secretary of the Education Cabinet [for Workforce Development] to determine the rate schedule for employer contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice. (1) Within the first calendar quarter of each year, the Division of Employment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for that year a "Notice of Contribution Rate".
(2) The notice shall:
(a) [Set [State [Set]]] [Set] forth the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for that year;
(b) [The notice shall also] [Inform each employer of:
1. The rate applicable to the employer's account for that year;
2. The tax, wage and benefit charge information regarding the employer's account; and
3. The statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and
(c) [The notice shall also] [Be issued in paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate (UI-29, Rev. 2006/09)" is incorporated by reference.
(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Office of the Director of [Commissioner for the Division of Unemployment Insurance [Department for Employment Services]], 275 E. Main Street, 2E [2W], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARR, March 13, 2007)

787 KAR 1:220. Required reports and due dates.

RELATES TO. KRS 341.070, 341.250(2), 341.190, 341.262
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.190(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes [grants] the secretary to promulgate [the power and authority to adopt, amend, or rescind] [such rules and] administrative regulations [deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) authorizes the Secretary of the Education Cabinet [for Workforce Development] to require an employing unit to furnish information and records concerning wages paid, employment and other related matters. This administrative regulation establishes [is to delineate] the required filing options, information, and reporting due dates [for the Employer's Quarterly Unemployment Wage and Tax Report (UI-3)].

Section 1. Definition. "Required report" means the Employer's Quarterly Unemployment Wage and Tax Report (UI-3), which is incorporated by reference in 787 KAR 1:100 and may be filed electronically.

Section 2. (1) Except as provided in subsection (2) of this section, an employer shall file the report required in Section 1 of this administrative regulation by:
(a) Submitting a paper form UI-3; or
(b) Submitting an electronic report via the Internet at https://www.ky.gov.
(2) An employer with ten (10) or more workers performing service in covered employment during any month within a quarter being reported shall submit an electronic report via the Internet at https://www.ky.gov. [Required Report [UI-3]] For the purpose of the administrative regulation, the required report which is incorporated by reference 787 KAR 1:100 is the Employer's Quarterly Unemployment Wage and Tax Report (UI-3) or the electronic version thereof [as provided in Section 2 of this administrative regulation]
(a) For any employer [employees] with more than ten (10) workers performing service in covered employment during any month within the quarter being reported, a report shall be considered filed if it is submitted using one (1) of the filing options available on the website provided by the department for this purpose, located at www.ky.gov.
(b) The secretary or his authorized representative shall waive this requirement upon a showing of proof that the employer has
been exempted from reporting wage information using electronic means under any like provision of federal law. Request for waiver from the requirement shall be made in writing specifying the reason for the request.

Section 3.[3-] Due Dates. (1) Except as provided in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2)(a) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer.

(b) [except:
   (a) For the purpose of the administrative regulation] An employing unit shall not be considered newly subject if:
   1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be considered newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state, or
   2. (If it has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2),
   (c) if suit
   (d) this subsection shall not apply if the employing unit has failed to file a required report due to willful intent to evade filing.[In this case] the provisions of subsection (1) of this section shall apply.

Section 4.[4-] Reports shall be considered received by the department as established [defined] in 787 KAR 1:230.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:230. Date of receipt of documents defined [Due dates].

RELATES TO: KRS 341.262, 341.300, 341.380, 341.430(2), 341.450(1)
STATUTORY AUTHORITY: KRS 151B.020(6), 341.115(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to implement KRS Chapter 341. This administrative regulation establishes requirements for determining [calculating] the date of receipt of documents required for the administration of [due dates established in] KRS Chapter 341.

Section 1. Except as provided in Section 2 of this administrative regulation, a contribution payment, report, continued claim, protest, or appeal shall be considered received by the department as of the date it is:

(1) Delivered to the department; or
(2) Deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt.

Section 2. Any report or payment received and processed by a contractor [an agent of the Department for Workforce Investment (Employment Services)] shall be considered received by the department as of the date recorded by the contractor [agent] and transmitted to the department. Any report or payment delivered to an contractor [agent of the department [for Employment Services]] by mail or commercial postal service shall be considered received five (5) business days prior to the date of delivery to the agent.

Section 3. If a due date of a contribution payment, report, continued claim, protest, or appeal falls on a day the office of the department is closed, the next day the office is opened shall be considered the due date.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:240. Fraud disqualifications.

RELATES TO: KRS 341.370
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to implement KRS Chapter 341. KRS 341.370(2) provides that a worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary. This administrative regulation establishes the number of additional weeks of disqualification to be imposed.

Section 1. Unreported Earnings. (1) If the department issues a determination [is issued] finding that a claimant fraudulently failed to [with-fraudulent-intent-did-not] report wages earned during a week of unemployment for which unemployment insurance benefits were claimed, an additional period of disqualification shall be imposed for each week of unreported earnings. In addition to the disqualification period imposed for each week by KRS 341.370(2),

(2) The additional period shall be the greater of:
   (a) Twelve (12) weeks in length; or
   (b) [in addition to the disqualification imposed for each week, an additional period of disqualification not less than twelve (12) weeks shall be imposed for each week of unreported earnings as follows:
      (1) Six (6) weeks for each week the unreported earnings are equal to or more than one and one-fourth (1 1/4) times the weekly benefit amount; and
      (2) Twelve (12) weeks for each week the unreported earnings are less than one and one-fourth (1 1/4) times the weekly benefit amount, except that no period of additional disqualification shall be less than twelve (12) weeks]

Section 2. Misrepresentation or Non Disclosure. If the department issues a determination [is issued] that a claimant through fraudulent misrepresentation or nondisclosure of fact, other than unreported earnings [which is addressed in Section 1 of this administrative regulation], attempted to establish his right to or the amount of his unemployment insurance benefits, in addition to the disqualification imposed for that week, an additional twenty-six (26) week period of disqualification shall [will] be imposed from the date
of discovery of the misrepresentation or nondisclosure.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)


RELATES TO: KRS 341.820(1)
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.820(1) authorizes the release of levy upon all or part of the property or rights to property levied upon if it is determined that the action of the [court will] will facilitate collection of liability. This administrative regulation establishes the conditions under which levy may be released.

Section 1. The secretary or his designated representative shall [may] release a levy if (for any one of the following reasons) [when either]:

1) The delinquent employer enters into an [satisfactory arrangement placing property in escrow with a value equal to or greater than the amount necessary to secure payment of the liability, including expenses of levy][1]:

2) The delinquent employer furnishes a bond equal to or greater than the employer's total liability [an acceptable bond] conditions upon payment of the liability, including expenses of levy][2]:

3) A payment is made of an amount determined by the division to be equal to the interest of the division in the seized property or part of the seized property to be released. The release of levy under this section is not to be confused with the discharge of property from the tax lien. However, the amount to be paid under this release provision shall [would] be determined in the same manner as for discharge of property from a tax lien. Release of a levy shall not itself constitute a lien release[3]:

4) The delinquent employer enters into a partial payment agreement [or][4]:

5) The value of the interest of the division in the seized property to be released is insufficient to cover the expenses of the sale.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:260. Voluntary election of coverage.

RELATES TO: KRS 341.070(9), 341.250(3)
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.250(3) provides that an employer may voluntarily elect to cover employment not otherwise covered by the chapter, subject to approval by the secretary. This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election the following information:

1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material; and

(b) A list of all employees along with gross salaries paid; and

2) Projections for the two (2) calendar years following the date of election, including:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections; and

(b) The number of workers anticipated, and projected salaries for each position.

Section 2. Except as provided in Section 3 of this administrative regulation, a voluntary election of coverage shall be approved if the information submitted in accordance with Section 1 of this administrative regulation indicates that the number of employees and the total amount of funding are projected to remain the same or increase over the time period covered by the information. Approval of voluntary election of coverage shall be made only if the employing unit seeking coverage satisfies each of the following:

1) Stability or growth of employment over the period of time specified in Section 1 of this administrative regulation;

2) Reliability of funding sources;

3) Reasonable assurance of continuity or growth of funding levels over the period of time specified in Section 1 of this administrative regulation;

Section 3. [Notwithstanding the above,] no [approval] shall not be granted for voluntary election in any calendar year if, in the preceding calendar year, the employer contributions [revenues] deposited to the Unemployment Trust Fund were less than the total benefits paid.

ANDREW FRAUENHOFER
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:270. Covered employment.

RELATES TO: KRS 341.050, 341.055
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.050 and 341.055 define covered and noncovered employment, respectively. This administrative regulation establishes [see forth] conditions affecting [certain] covered or [and] noncovered employment in corporations or within families.

Section 1. Service by Officers, Directors, or [and] Stockholders
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of Corporations. [Within a corporation—]

(1) An officer of a corporation shall be presumed to be in covered employment if, under the corporation’s charter, bylaws, or minutes, he is required to perform some service, whether or not the service is actually performed.

(2) Any stockholder, director, or officer [director, or officers] who receives remuneration in the form of a salary [salaries] or wages [that is, earned on the corporation payroll records or provided for in its bylaws or minutes] shall be presumed to be in covered employment whether or not services are actually performed if the salary or wages are carried on the corporation payroll records or provided for in its bylaws or minutes.

(3) Any director of a corporation [Directors of corporations] who perform no service for the corporation other than to attend a directors’ meeting [meetings] shall not be in covered employment.

Section 2. Family Exempt Employment. [In applying family exemption—] (1) [Family exemption applies only in proprietorships or partnerships; In a partnership, receipt shall occur if only when there is an exempt relationship as defined in KRS 341.055(2)] between the worker and each partner [an exempt relationship must exist with each partner in order for employment to be noncovered;]

(2) A stepchild [Stepchild] under age twenty-one (21) who is [are] employed by his stepparent [stepparent(s)] [their-parent(s)] shall be considered the same family exempt relationship as that of a natural or adopted child [children], but only if the stepparent claims [stepparent(s) claim] him [them] as an exempt [exemptions] on federal and state income tax returns.

ANDREW FRAUENHOFFER
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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:300. Successorship.

RELATES TO: KRS 341.070, 341.540
STATUTORY AUTHORITY: KRS 1518.020, 341.115, 341.540(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.540(2) provides that the bases for successorship, other than transfers between existing units with common ownership, shall be determined in accordance with administrative regulations promulgated [established] by the secretary. This administrative regulation establishes [sets forth] the conditions under which an one or more) employing unit shall be found to be successor to another.

Section 1. Definitions. (1) "Domestic employing unit" means an employing unit for which service is provided as described in KRS 341.050(1)(a).

(2) "Going concern" means an employing unit that is providing goods or services, maintaining a staff or meeting payroll.

Section 2. Except as provided in Section 3 of this administrative regulation, successorship [Determination of Successorship] Successorship for a nondomestic employed [employees] shall be deemed to have occurred between two (2) employing units if [when the following conditions exist]:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary.

(2) At least two (2) of the [following] conditions established in the subsection are met, except this requirement [provided that the condition] shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The employing unit was a going concern at the time negotiations for the transfer began; [when acquired, for the purpose of this administrative regulation, a going concern shall also include an employing unit which has temporarily ceased subsequent to the date on which negotiations to transfer the employing unit were begun.]

(b) The subsequent owner or operator continued or resumed basically the same type of employing unit in the same location;

(c) The subsequent owner employed fifty (50) percent or more of the previous owner’s employees in covered employment;

(d) The previous owner employed fifty (50) percent or more of the subsequent owner’s workers in covered employment;

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

Section 3, [2.] Successorship for a domestic employing unit shall be deemed to have occurred if [when] two (2) of the conditions established under Section 2(2)(a) [under Section 1(2)(a)] through (e) of this administrative regulation exist.

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EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, March 13, 2007)

787 KAR 1:310. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2), 42 U.S.C. 503(a)(10), (11)
STATUTORY AUTHORITY: KRS 1518.020, 341.115, 341.350(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulation necessary to administer KRS Chapter 341, 42 U.S.C. 503(a)(10) and (11) require states to establish profiling systems to identify unemployment claimants who are [would be] likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2)(b) provides that [was amended by the 1994 General Assembly to conform to the requirement, and made] the Secretary of the Education Cabinet shall establish [be] for Workforce Development responsible for establishing a profiling system. [The purpose of this administrative regulation establishes [to prescribe] conditions, consistent with the provisions of 42 U.S.C. 503(a)(10) and (11), under which a claimant shall, which enables a claimant to be treated as having satisfied the requirement to participate in reemployment services as a condition of receiving benefits.

Section 1. Definition. "Profiling" means a method by which the secretary shall determine if an unemployment claimant is likely to exhaust benefits.

Section 2. Profiling System. (1) Except as provided in subsection (2) of this section, all unemployment claimants shall be subject to profiling as a condition of receiving benefits.

(2) A claimant shall be exempted from profiling if the claimant:

(a) Is applying for extended benefits or special federal program benefits including Trade Adjustment Assistance and
Disaster Unemployment Assistance:
(b) is classified as a "Group B" claimant as established in 787 KAR 1:090, Section 112(6);
(c) is in approved training as provided in KRS 341.350(6);
(d) has weekly earnings deductions in excess of the benefit amount or
(e) is receiving reemployment services through a union hiring hall.
(3) The secretary shall utilize a statistical model of worker profiling as the basis for the identification of claimants for reemployment services. The profiling system shall identify a claimant as unlikely to return to his previous industry or occupation through the consideration of employment related variables. These variables shall not include the claimant's age, gender, race, ethnicity or national origin.
(4) A claimant shall be profiled when issued a first benefit payment. Including a zero amount due to excessive earnings or other reason.
(5) A claimant identified by the profiling system as likely to exhaust benefits shall be referred for reemployment services from the Office of Employment and Training based on the availability of services. A claimant who is not referred for services within four (4) weeks after identification by the profiling system shall not be referred and shall be considered to have satisfied the requirements of KRS 341.350(2)(b) for the receipt of benefits.

Section 3. Eligible dislocated worker. A claimant determined to be an "eligible dislocated worker" under the Workforce Investment Act, 29 U.S.C. 2801 et seq., may participate in the profiling system. Any claimant who, pursuant to KRS 341.350(2) is referred to participate in reemployment services, such as job search assistance services, as a condition of receiving unemployment insurance benefits, shall be deemed to have satisfied the requirement if:
(1) The claimant has completed the services to which he is referred;
or
(2) There is justifiable cause for the claimant's failure to participate in the services. For the purpose of the administrative regulation, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances.

ANDREW FRUENHOFFER
APPROVED BY AGENCY: December 6, 2006
FILED WITH LRC: December 15, 2006 at 9 a.m.
CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Division of Health Insurance Policy and Managed Care
(See paged at ARRS, March 13, 2007)

806 KAR 17:480. Uniform evaluation and reevaluation of providers.

RELATES TO: KRS 205.560(12), 2168.155(2), [304.2-020,] 304.17A-005, [204.17A-070,] 304.17A-545(4)
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), (1/2005), 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" as defined in KRS 304.1-060(41) means the Executive Director of the Office of Insurance."
(3) "Evaluation" or "credentialing" means:
(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.
(2) "Executive director" as defined in KRS 304.1-050(1)
(3) [44] "Form KAPER-1" as defined in KRS 304.1-050(1) means the uniform application for credentialing or recredentialing of a health care provider pursuant to KRS 304.17A-545(5).
(4) [45] "Health care provider" means:
(a) A health care provider pursuant to KRS 304.17A-005(3)[209] or [and]
(b) A psychologist licensed under KRS Chapter 319,
(5) [46] "Insurer" as defined in KRS 304.17A-005(27) [64].
(6) [47] "Managed care plan" as defined in KRS 304.17A-500(9)
(7) [48] "Office" as defined in KRS 304.1-050(2) [means the Office of insurance].
(8) [49] "Participating health care provider" as defined in KRS 304.17A-500(10).
(9) [49] "Provider network" as defined in KRS 304.17A-005(3) [34].
(10) [49] "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 Insurers. (1) Except as established in subsection (4) of this section [249], an insurer which offers a managed care plan and performs credentialing or recredentialing activities [en or after January 1, 2006] shall use Form KAPER-1 [11/2006] [12/2006], Part A to credential or recredential a health care provider who desires 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] [12/2006], Part A and
(b) Within thirty (30) days of receipt of a complete Form KAPER-1 [11/2006] [12/2006], Part A, electronically or in writing:
1. Notify the health care provider of any omission or question 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] [12/2006], Part A, which includes all data elements required for processing, 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] [12/2006], Part A; and
2. The health care provider is informed of the need for more time, including information relating to the extenuating circumstance 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] [12/2006], Part A which is not relevant to the scope of practice, health care setting,
Section 3. [Penalties. The penalty for noncompliance with any of the above requirements is a fine of not less than five ($5) dollars nor more than fifty ($50) dollars for each offense. If the facts are falsely stated for the purpose of deception, the guilty party shall be fined and/or suspended or expelled.]

Section 4. [Receipt of Entries for Early Closing Events, Late Closing Events, Stakes and Futurities. (1) An entry that is not [All entries not actually] received prior to [all] the hour of closing shall be ineligible, except an entry [entire] by letter bearing postmark not later than the following day (omitting Sunday).

"If [entries notified by telegraph] the telegram to be actually received 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] Web site at: http://dol.ppr.ky.gov.

JULIE MIX MCPEAK, Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary
APPROVED BY AGENCY: February 5, 2007
FILED WITH LRC: February 8, 2007 at 10 a.m.

CONTACT PERSON: Metuex Rivera, 215 West Main Street, 215 West Main Street, Frankfort, Kentucky 40602-017, phone (502) 661-2328.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(As Amended at ARRS, March 13, 2007)

811 KAR 1:055. Entries.


STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.630(6), 230.630(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Kentucky Administrative Regulations prescribing the [To-regulate] conditions under which horse [harness] racing shall be conducted in Kentucky. This administrative regulation establishes requirements for [The function of this administrative regulation is to regulate] entries.

Section 1. An entry [All entries] shall [must]:

(1) Be made in writing or by telephone to the association racing secretary’s office.

(2) Include the following information pertinent to the entry:

(a) The name of the horse;

(b) The name of the trainer;

(c) The name of the driver; and

(d) The class of the race into which the horse is to be entered; and all information pertinent to the entry.

(3) Be signed by the owner or his authorized agent except as provided in 811 KAR 1:055, Section 1.

(4) Be accompanied by the address of the horse and agent or registered stable-name of owner.

(5) Be accompanied by a check or money order payable to the association.

(6) Be accompanied by the name, race, and time of the race.

Section 2. Payment of Entry Fee An entry fee shall be due and payable with declaration to start and shall [will] not be refunded if the horse fails to start unless the horse dies between the time of declaration to start and the start of the race. [For purposes of clarification, entry fee shall be defined as the payment required with declaration to start]
Section 6. (7) Transfer of Ineligible Horse. A horse entered in an event for which it is not eligible to [eligibility] may be transferred to any event for [eligible] at the same gate.

Section 7. (8) Withholding Pursue on Ineligible Horse. An association [Trades] shall withhold [be warranted in withholding] the purse [premium] of any horse, with or without a formal protest, if the association receives [they receive] information that this entry is fraudulent or ineligible.

Section 8. (9) Agreement to Race Under Rule. Any entry shall constitute an agreement that the horse to be entered and all persons associated with or making it the winner, owners, lessees, manager, agent, trainer, or other person having control of the horse [and the horse] shall [be subject to and shall] be subject to 811 and [and] [section and] [section of regulations], and will submit all disputes and questions arising out of such entry to the authority and the judgment of this commission, whose decision shall be final.

Section 9. (10) Early Closing Events and Late Closing Races. (1) Late date and place. The sponsor shall state the place and date [day] the event will be raced and no change in date, program, events, or conditions shall [be] be made after the nominations have been taken without the written consent of the owners or trainers [trainer] of all horses entered at the time the conditions are changed.

(2) Filing conditions. An entry blank shall be filed with the Authority [commission] on or before the 15th of the month. All nominations and payments other than starting fees in early closing events shall be advertised to fall on the 15th day of the month.

(3) Late dates. The complete list of nominations to any late closing race or early closing event shall be made available [published] within twenty (20) days after the date of closing [and mailed] to each nominator and the Authority [commission].

(4) Procedures. The event does not fill, the event does not fill, each nominator and the Authority [commission] shall be notified within ten (10) days and refund of nomination fees shall accompany the notice.

(5) Transfer provisions for change of gate. (a) The following conditions shall govern transfers if there is a change of gate. This section shall be subject to the Authority [commission] at least thirty (30) days prior to the date of the event's early closing conditions and the receipt of the approval of the Authority for those conditions:

1. If a horse has a condition approved, the following proviso with the proviso will govern transfers in the event of a change of gate, if a condition [conditions] published for early closing events allows [allow] transfer for change of gate, and the [such] event shall be the slowest class for which the horse is eligible and eligibility shall be determined at time of closing of entries.

2. The race to which the transfer may be made shall [must] be the race closest in time to [one nearest] the date of the event for which the horse was originally entered.

(b) The horse entered in a class that corresponds to the [two-year-old, three-year-old, four-year-old, or four-year-old entered in a class for their age group shall be permitted into only one age class, and the event for which the horse transfers shall be the race closest in time to the date of the original event, if transfer is made [legally entered], entry fees shall be adjusted.

Section 10. (11) Subsequent Payments; List of Eligibles. If subsequent payments are required by the published conditions, a complete list of those horses withdrawn or declared out shall be made within fifteen (15) days after the payment was due and the list has been made available [mailed] to each nominator and the Authority [commission].

Section 11. (12) Trust Funds. [All] Fees paid in early closing events shall be segregated and held as trust funds until the event is contested.

Section 12. (13) Early Closing Events by New Track. An [N] entry shall be the earliest event at an early closing event at 811 [that has not had its application approved by the Authority [commission]. An association [Trades] accepting nominations to early closing races, late closing races, stakes, or [and] furlongs shall provide [will give] stable space to a horse nominated and eligible to the event the day before, the day of, and the day after the event date.

Section 13. (14) Limitation on Conditions. Conditions of an early closing event [event] or a late closing race shall not add a horse that has not been nominated to an event or [race] that will eliminate an already nominated horse from [horses-nominated-to an event, or] add horses that have not been nominated to an event, or reasons for the performance of the horse [by horse] at an earlier meeting during [held] the same season, and conditions purporting to do so shall be considered to be [are] invalid. An early closing event [event] or a late closing event [event] shall not have [will] more than two (2) also eligible conditions.

Section 15. Penalties. Any official or track who fails to comply with any provisions of this rule shall be fined, suspended or expelled, unless otherwise provided.

Section 16. In early closing races, late closing races, and overnight races requiring entry fees, all monies paid in by the nominators in excess of eighty-five (85) percent of the advertised purses shall be added to the advertised purse and the total shall then be considered to be the advertised purse. In addition to adding excess entry fees as provided in this section, [above] the sponsor shall add at least fifteen (15) percent to the advertised purses of late closing races and overnight races. Fifteen (15) percent of all monies paid in by the nominators shall be added to all early closing races by the sponsor.
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STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)-(6) NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the condition under which horse racing shall be conducted. This administrative regulation establishes a requirement for declarations to start and drawing horses.

Section 1. Declaration. (a) [Deleted.] (b) [Deleted.]

Section 2. Qualifying Races. At an extended pari-mutual meeting [meetings], declarations for overnight events shall be governed by the following:

(a) The drawings shall be final.

(b) A declaration [mail, telephone, or telegraph] [declarations] shall state:

1. Name and address of the owner or lessee;
2. Name, color, sex, sire and dam of the horse;
3. Name of the owner and his colors;
4. Date and place of last start;
5. Past performance of the horse [Current summary, including the number of starts, first, seconds, thirds, earnings and best winning time for the current year; and
6. Event or events in which the horse is to be entered.

(1) Effect of failure to declare on time. If an association [a track] requires a horse to be declared at a stated time, failure to declare at that time shall be considered a withdrawal from the event.


(a) After declaration to start has been made, a horse shall not be withdrawn only because of sickness, lameness, injury, or hazardous track conditions. The presiding judge shall make the final determination of whether or not to grant permission [drawn] without permission of the judges.

(b) Any horse eligible to start in a second, third, or fourth heat of a race shall not be withdrawn [drawn] without the permission of the judge in accordance with paragraph (a) of this subsection.

(c) A person who withdraws [fires, does not to exceed $500, or suspensions] may be imposed for drawing a horse without permission.

(d) No penalty shall be assessed to the horse and the party who violates the administrative regulation.

(3) A horse [Horses] omitted through error.

(a) Except as provided in this subsection, a drawing shall be final.

(b) A horse that has been omitted shall be added to the race and given the outside post position if:

1. There is conclusive evidence that the horse was properly declared;
2. The horse was omitted from the race through error of an association, its agent, or employee; and
3. The error is discovered prior to the electronic distribution of the overnight sheet. (If there is conclusive evidence that a horse, properly declared, other than by telephone, was omitted from the race through error of an association [a track, its agent or employee, the horse may be added to the race and given the outside post position.)

(c) For a pari-mutuel meeting [meetings], the provisions of this subsection shall apply only if the error is discovered prior to the publication of the official program.

Section 2. Qualifying Races. At an extended pari-mutual meeting [meetings], declarations for overnight events shall be governed by the following:

(a) Within thirty (30) days of being declared, a horse that has not raced previously at the gait chosen shall:

1. Complete [Go] a qualifying race in compliance with the conditions set forth by the association under the supervision of a judge holding a presiding or associate judge’s license for pari-mutual meetings; and
2. Acquire at least one (1) charted line by a licensed charter.

(b) Time and beaten lengths shall be determined by a standard photo finish.

(c) The requirements [prevision] of subsection (1) of this section shall apply to a horse that does not show a charted line for:

1. The previous season; or
2. Within its last six (6) starts.

(d) Uncharted races contested in a heat [heats] of more than one (1) dash, and consolidated according to subsection (4) of this section shall be considered one (1) start.

(e) The requirements [prevision] of subsection (2) of this section shall not apply if a horse:

1. Has raced at a charted meeting during the current season; and
2. Has [gone] to meetings at which the races are not charted.

(b) The information from the uncharted races may be:
1. Summarized, including each start, and
2. Consolidated in favor of charted lines.

(4) If the race is less than [net-at-least] one (1) mile, the consolidated line shall list the carry date, place, time, driver, finish, track condition, and distance.

(5)(a) The judges shall require a horse that has been on the judges' [stewards'] list to successfully compete [go] a qualifying race except as provided in subsection (6)(e) of this section.

(b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, after making allowance for track variations, the horse shall [be] [may] be required to successfully compete [go] a qualifying race.

(6)(a) Except as provided by paragraph (b) of this subsection, if adequate competition is not available for a qualifying race, the judges may permit a fast horse to qualify by a timed workout that is consistent with the time of the races in which the horse will compete.

(b) A horse shall be required to qualify in a qualifying race if it is on the judges' [stewards'] list for any of the following:
1. Breaks; [or]
2. Refusing to come to the gate;
3. Poor performance;
4. Being unmanageable; [and]
5. Qualifying races shall be:
   (e) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more; and
6. Excluded as needed [twice-a-week] though the last week of the meeting.

(7)(a) A race to qualify drivers and horses shall be charted, timed, and recorded.
(b) A race to qualify only drivers shall not be required to be charted, timed, and recorded.

(8)(a) Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefixed with the letter "Q".
(b) The record shall not be prefixed with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.

2. The presiding judge shall report the test on the judge's sheet.

(9)(a) Before it is permitted to start in a race with pari-mutuel wagering, a horse that fails to race at a charted meeting within thirty (30) days after having started shall:
   (a) Start in a charted race, or a qualifying race; and
   (b) Meet the standards of the meeting
   (11) A horse shall not enter for one more than one (1) qualifying race per day.

Section 3. Coupled Entries. (1)(a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled as a single entry [an "entry"] if they are:
1. Owned or trained by the same person; or
2. Trained in the same stable by the same management.
(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the "entry".

(2)(a) If a trainer enters two (2) or more horses, under bona fide separate ownership or the same ownership, in the events specified in paragraph (b) of this subsection, each horse [the horses] may race as a separate betting entry [entries] if:
1. The association has requested they be permitted to race as separate betting entries; and
2. The judges approve the request.

(b) This subsection shall apply to any [The events to which the provisions of the subsection apply shall be] a stake, early or late closing event, futurity, free-for-all, or other special event.

(c) If more than one (1) horse is [the fact that the horses are] trained by the same person, that fact shall be stated prominently in the program.

(d) If the race is split in two (2) or more divisions[,--] horses coupled in a single entry [an "entry"] shall be seeded insofar as possible, in the following order, by:
1. [a] Owners;
2. [b] Trainers; and
3. [c] Stables.

(e) [The] Divisions in which they compete and [their] post positions shall be drawn by lot.

(2) Elimination heats also shall be governed by the provisions of paragraphs (d) and (e) of this subsection.

(3) The presiding judge or the race secretary shall be responsible for coupling horses.

(4) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-mutuel wagering.

(b) An entry [if this occurs] [Entries] shall not be rejected on that basis.

(5) If an owner, lessor, or lessee[,] has a vested interest in another horse in the same race, it shall constitute an entry.

Section 4. Also Eligibles. (1) [Net] More than two (2) horses shall not [may] be drawn as also eligibles for a race.

(2) The [These] positions of also eligibles shall be drawn along with the starters in the race.

(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:
   (a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;
   (b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; or [and]
   (c) In other races, take the post position drawn by the horse it replaces.

(4) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.

(5) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.

(b) The owner or trainer of each [of] a horse moved into the race from the also eligible list shall be notified that the horse is in to [go] [race].

(c) The horse shall be posted at the race secretary's office.

(6) A horse [Horses] on the also eligible list that is [are] not moved into race by scratch time of the track [9:00 a.m. on the day of the race] shall be released.

Section 5. Preference. (1) [Net] Preference shall be given in [all] overnight events according to a horse's last previous purse race during the current year.

(b) The preference date on a horse that has drawn to race and has been scratched shall be [is] the date of the race from which the horse [he] was scratched.

(2) If a horse is racing for the first time in the current year, the date of the first successful qualifier [declaration] shall be considered the horse's [the horse's] last race date, and preference shall be applied accordingly.

(3)(a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.

(b) If a preference date error has occurred, the race shall be redrawn.

Section 6. Judges' [Stewards'] List. (1)(a) A horse shall [may] be placed on a judge's [stewards'] list by the presiding judge if it is unfit to race because it [is]:
1. Is dangerous;
2. Is unmanageable;
3. Is sick;
4. Is lame; or
5. Is unable to show a performance to qualify for races at the meeting or
6. Has exhibited repeated breaks.

(b) The owner or trainer shall be notified in writing when a horse is placed on a Judge's list [of this action], and the specific item listed in paragraph (a) of this subsection upon which the action is based.
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(c) Declaration on a horse placed on a judge’s [stewards’] list shall be refused.
(d) If a horse is placed on a judge’s [stewards’] list, the clerk of the course shall make a note on the electronic eligibility certificate of the horse stating that:
1. The date it was placed on the judge’s [stewards’] list;
2. [The] Reason it was placed on the judge’s [stewards’] list; and
3. If the horse has been removed from the judge’s [stewards’] list, the date of its removal.

(2) (a) A presiding judge or other official at a nonextended meeting shall not remove from the judge’s [stewards’] list and accept as an entry a horse that:
1. Has [Had] been placed on a judge’s [stewards’] list, and
2. Because he is a dangerous or unmanageable horse. Has not been removed from the judge’s [stewards’] list because it is dangerous or unmanageable.
(b) A presiding judge shall [nonextended-meeting may] refuse declarations on a horse that has been placed on, but not removed from, a judge’s [stewards’] list (and not removed therefrom).

(3) A horse scratched from a race because of lameness or sickness shall not race for a period of seven (7) days beginning with the day of the scratch (after another race for at least three (3) days from the date of the race from which the horse was scratched).

Section 7. Driver. (1) A declaration [Declarations] shall state the name of the horse driver and [driver] who shall drive the horse and give the driver’s colors.
(2) A driver shall not be changed after scratch time [as a.m.] of the track [day preceding the race] without the permission of the judges. The judges shall grant permission if:
(a) The driver is unable to be on the premises for a good faith reason beyond his or her control; or
(b) The driver is on the premises but unable to participate due to sickness or injury [and a showing of good cause].
(3) If a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers if no conflicts of interest exist between the ownership of the horses and the drivers.

Section 8. (1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutual meeting to appoint a committee to consist of the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horsemen’s Association to consider [for the election of a horseman and an alternate to represent them on] matters relating to the withdrawal of horses due to bad track or weather conditions.
(2) (a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of the committee formed in subsection (1) of this section [a committee consisting of an agent of the track member, the elected representative of the horsemen and himself].
(b) Upon unanimous decision by the committee that track conditions are safe for racing, [unanimously] withdrawals shall not be made.
(c) The money posted pursuant to subsection 3(1)(2) [4(2)] of this section shall be forwarded to the Authority [commission].

(c) The money shall be:
1. Returned [Retained-as-a-fine] if the Authority [commission] determines that the withdrawal was not for good cause; or
2. Refunded if the Authority [commission] determines that the withdrawal was for good cause.

Section 9. Length of Race and Number of Heats. (1) A race or dash shall be listed at a stated distance in units no shorter than one-sixteenth (1/16) of a mile.
(2) The length of the race and the number of heats shall be stated in the conditions.
(3) If a distance or number of heats is not specified, any race shall be a single mile dash except at fairs and meetings of a duration of six (6) days or less where they shall be conducted in two (2) dashes at one (1) mile distances.

Section 10. Two (2) Year Olds. (1) A two (2) year old shall not be permitted to:
(a) [Start in a dash or heat exceeding one (1) mile in distance; or
(b) Race in more than two (2) heats or dashes per day.

Section 11. Penalties. A person or association that (1) A licensed person who violates any provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).
(2) An association that violates any provision of this administrative regulation shall be subject to a fine of up to $2,000 per occurrence, based upon the factual nature and seriousness of the violation.
(3) An unlicensed person who violates any provision of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1). (2) A violation of subsection (1) of this section shall subject the:
(a) Track to a fine of not less than twenty-five (25) dollars; and
(b) The owner to the forfeiture of any winnings.

TERESA J. HILL, Secretary
WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
APPROVED BY AGENCY: October 13, 2006
FILED WITH LRC: October 13, 2006 at 11 a.m.
CONTACT PERSON: R. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 554-7760, fax (502) 564-3969.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(As Amended at AARS, March 13, 2007)

811 KAR 1:100. Protests.

RELATES TO: KRS 230.215, 230.260(1) [230.630(4), (3), 230.646]
STANATORY AUTHORITY: KRS 230.215(2), 230.260(3) [230.630(3), (4), (7)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [to regulate conditions under which harness] racing shall be conducted in Kentucky. This administrative regulation establishes requirements for [The function of the administrative regulation to regulate] protests and the effect of protests.

Section 1. Protests. Protests shall:
(1) Be made only by:
VOLUME 33, NUMBER 10 – APRIL 1, 2007

Section 2. The judges shall, in (every) case of protest, demand that the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person's [and in case of their refusal to do so, the horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited [with a forfeit of entrance money.

Section 3. Unless the judge finds satisfactory evidence to warrant excluding the horse, they shall allow a horse [hors] to start or continue in the race under protest, and the purse [premium], if any is won by that horse, shall be retained by the association on behalf of [for which transmitted to] the Authority [commissions] to allow the interested parties to continue the [interested opportunity to] continue the [affected party's opportunity to pursue the] protest proceeding. In accordance with Section 6 of this administrative regulation

Section 4. Any person who knowingly, and with intent to influence the results of a race, protests [found guilty of protesting] a horse falsely and without cause, or merely with intent to embarrass a race, shall be charged pursuant to Section 9(2) of this administrative regulation [punished by a fine not to exceed $250 or by suspension of expulsion].

Section 5. This administrative regulation shall not [Nothing herein contained shall] affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the [when such] distribution is made upon the official placing at the conclusion of the heat or dash.

Section 6. (1) A protest shall be reviewed and appealed in accordance with the procedures set forth in 811 KAR 1:105 and KRS Chapter 13B.

(2) The purse money affected shall be deposited with the Association pending the decision of the protest review or appeal. [In case of an appeal or protest, the purse money affected will be deposited with the Association [commission in trust funds] pending the decision of the appeal. The review and appeal procedure set forth in 811 KAR 1:105 shall be followed.

Section 7. A [Any] judge who refuses [may be suspended for refusal] to accept a protest shall be in violation of this administrative regulation.

Section 8. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall have waived the right to protest after the race if the protest would have prevented the ineligible horse from running in the race. Failure to make a protest prior to the running of a race when the protestor had knowledge of the basis of a protest prior to the running of said race, may constitute a waiver or the discretion of the judges or the commission if the protest would have prevented an ineligible horse from racing.

Section 9. Penalties. (1) A [Any] person or association that violates a [any] provision of this administrative regulation, the exception of Section 4 of this administrative regulation, shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).

(2) Any person or association that violates Section 4 of this administrative regulation shall have committed a Category 2 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(2).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Lexington, Kentucky 40501, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner
WILLIAM STREET, Chairman
APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7700, fax (502) 564-3909.

ENIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(As Amended at ARRS, March 13, 2007)

811 KAR 1:110. Timing and records.

RELATES TO: KRS 230.215, 230.250(1) [230.630(1), (3), 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.250(3) [230.630(3), (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.250(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse [to regulate conditions under which] racing shall be conducted in Kentucky. This administrative regulation establishes requirements for the function of this administrative regulation is to regulate] timing of races and records.

Section 1. Timing Races. (1) The time of a [in-every-race, the time of each] heat shall be [accurately] taken by:
(a) One (1) timer on a approved electronic timing device; or
(b) Three (3) timers using timing devices [three-(3) timers or by one (1) timer on an approved electronic timing device].

(2) The time shall be [in which case there shall be one (1) timer] to be one (1) timer, and placed in the record in minutes, seconds, and hundredths of seconds, and upon the decision of each heat, the time thereof shall be publicly announced or posted.

(3) An [An] unofficial timing shall not be announced or admitted to the record, and if [when] the timers malfunction [fail to act], [we] time shall not be announced or recorded for that heat.

Section 2. Error in Reported Time. If an [in any case of alleged] error in the record is alleged regarding the time of a horse, [an announcement or publication of the time made by a horse] the time [we] questioned shall not be changed [to favor said horse or owner] except upon the sworn statement of the judges and timers who officiated [in] the race.

Section 3. Track Measurement Certificate. An association shall file with the Authority a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certifying in linear feet the result of the meas-
Section 4. Time for Layup on Break. The leading horse shall be timed and his time only shall be announced. A winner shall not obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing [a horse is declared a winner by reason of the disqualification of a breaking horse on which he was laid].

Section 5. Time for Dead Heat. In case of a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 6. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 7. [Any person who shall be guilty of fraudulent misrepresentation of time or the alteration of the record thereof in any public race shall be fined, suspended or expelled, and the time declared not a record.

Section 8. [Any person who shall be guilty of fraudulent misrepresentation of time or the alteration of the record thereof in any public race shall be fined, suspended or expelled, and the time declared not a record.

Section 8. Time Performances. Time performances shall be permitted subject to the following:

1. Any horse shall be timed in a race by a photo finish or electronic timing [a horse is declared a winner by reason of the disqualification of a breaking horse on which he was laid].

2. Any time performance shall be required for any horse (all horses) with a winning time performance.

3. An approved time performance shall be required for all time performances. If there is any failure of a timer during the progress of a time performance, a new time trial performance record shall be obtained.

4. Any time trial performance shall be permitted only during the course of a regular meeting while the regular officials are in the judges' stand. Time trial performances may be permitted by the Authority immediately prior to or following a regularly scheduled meeting if approved in writing and if approved in writing.

5. Any time trial performance shall be not be included in the performance lines in a race program.

6. Any time trial performance shall be designated by preceding the time with two (2) capital T's.

7. If [an] A horse performs against a horse shall be permitted (it shall be proper to allow another horse or horses to accompany him in the performance but not to precede or to be harnessed with or in any way attached to the performing horse, any].

8. A break during a time trial shall be considered a losing performance, [effort] and a losing performance shall not constitute a record.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(As Amended at ARRS, March 13, 2007)


RELATES TO: KRS 230.215(1), 230.260(1)
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)
NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Authority "plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.260(3) grants the Authority "full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted." This administrative regulation repeals 811 KAR 1:135, 1:145, 1:155, 1:160, 1:165, 1:170, 1:180, 1:190, and 1:195 [1:185, 811 KAR 1:170, 811 KAR 1:190, and 811 KAR 1:200].

Section 1. The following administrative regulations are hereby repealed:

1. 811 KAR 1:135. Identification cards and badges;
2. 811 KAR 1:145. Number of races per program;
3. 811 KAR 1:155. Postmeets; decision on;
4. 811 KAR 1:160. Association with undesirable prohibited;
5. 811 KAR 1:165. Driver's stand;
6. 811 KAR 1:170. Telephones;
7. 811 KAR 1:175. Track inspections;
8. 811 KAR 1:180. Personnel to be licensed, fees; and
9. 811 KAR 1:185. Matters not covered by rules; violations: and


APPROVED BY AGENCY: August 14, 2006
FILED WITH LRC: August 15, 2006 at 9 a.m.
CONTACT PERSON: P. J. Cooksey, Kentucky Horse Racing Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3569.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(As Amended at ARRS, March 13, 2007)

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(7)(b), (7)(e), 230.330, 230.804
STATUTORY AUTHORITY: KRS 230.804(2)(b)
NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) authorizes the Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative procedures to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions. (1) "Applicant" means a Kentucky affiliate (an organization) representing a breed of horses which is eligible to register with the Authority to participate in the Kentucky Horse Breeders' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the Authority outlining the procedures by which the Kentucky affiliate shall award funds from the Kentucky Horse Breeders' Incentive Fund to be distributed to the Kentucky affiliate.

(3) "Breed" means a subspecies (species) of horse with particular physical characteristics common to the subspecies (species) which are used in establishing the identity of a horse by a registry recognized by the Authority.

(4) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.

(5) "Incentive" means a person whose performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(6) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.

(7) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(8) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.

(9) "Kentucky affiliate" means the Kentucky organization recognized by a national breed organization as the organization representing that particular breed of horse in Kentucky.

(10) "National breed organization" means an organization on the national level which establishes the criteria for inclusion of a horse within the breed represented by the organization.

Section 2. Registration of Kentucky Affiliate. (1) Only a Kentucky affiliate may register to participate in the KHBIF.

(2) To become eligible to receive funds from the KHBIF, a Kentucky affiliate shall register with the Authority by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the Authority.

(3) A thoroughbred breed shall not be eligible for registration with the KHBIF.

(4) A standardbred breed shall not be eligible for registration with the KHBIF, unless the standardbred breed consists exclusively of show horses.

(5) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHBIF.

(6) The authority may establish, under the general jurisdiction of the Kentucky Horse Racing Authority, the Kentucky Horse Breeders' Incentive Fund Advisory Committee. If established, the advisory committee shall consist of three (3) members appointed by the chairman of the Authority by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the Kentucky Horse Racing Authority shall make the appointment without the recommendation. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(7) (a) The Kentucky Horse Breeders' Incentive Fund Advisory Committee shall advise and assist the Kentucky Horse Racing Authority in the registration procedures described in this section. The advisory committee shall make a recommendation of approval or denial to the Authority for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section (all relevant information available to the advisory committee. The Authority shall then approve or deny the application as appropriate in furthering the best interests of horse breeding in the Commonwealth.

(b) The Kentucky Horse Racing Authority shall employ qualified personnel necessary to assist the authority and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall be selected by the Authority and compensation for these personnel shall be fixed by the Authority.

(8) After the advisory committee recommends to the Authority the approval or denial of an application, the Authority shall consider the recommendation and whether or not the requirements of this administrative regulation have been met and shall, as appropriate in furthering the best interests of horse breeding in the Commonwealth, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Deny consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(9) Registration shall be effective for three (3) [2]-[2]-year periods. The first three (3) [2]-[2]-year period registration shall consist of the [2]-[2]-year period beginning January 1, 2006, and ending December 31, 2008 [2007]. The next two (2)-year registration period shall consist of the [2]-[2]-year period beginning January 1, 2008 and ending December 31, 2009, and each succeeding registration period shall consist of two (2)-year increments beginning on January 1 of the first year and ending on December 31 of the second year.

(10) For the first registration period [beginning January 1, 2006, and ending December 31, 2008,] Kentucky affiliates shall register with the Authority on or prior to March 31, 2007 [December 31, 2005]. The Authority may, in cases of unavoidable neglect or for other valid causes, extend the registration deadline until February 28, 2007.

(11) For each three (3) [2]-[2]-year period beginning January 1, 2009 [2008], a Kentucky affiliate shall register with the Authority or on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) [2]-[2]-year registration period.

(12) A Kentucky affiliate shall have until December 31 following the November 1 deadline set forth in subsection (11) of this section to revise and update any information previously provided to the Authority on or before the November 1 deadline.

(13) The application and the accompanying award distribution plan provided to the Authority shall set forth the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed.
residing in Kentucky; and

(d) The award distribution plan pursuant to which awards shall be distributed to incentive winners who are breeders or owners of horses bred or foaled in Kentucky owning horses of the breed. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization.

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization.

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization.

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(14)(a) The Authority shall be recognized and designated as the sole official registrar of the Kentucky Horse Breeders’ Incentive Fund for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the Authority for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky;

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(15) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall be responsible for promptly notifying the Authority of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to change.

Section 3. Timing and Distribution of Awards

(1) The events eligible for awards from the Kentucky Horse Breeders’ Incentive Fund, as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed each year.

(3) The Authority, with the cooperation of each Kentucky affiliate, shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.

(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(13)(c) of this administrative regulation [to the Kentucky affiliate participating in the KHBIF] by the total number of horses within all Kentucky affiliates participating in the KHBIF. The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate’s application form on the December 31 deadline preceding the three (3) (2)(2)-year registration period; and

(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an Incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the Authority pursuant to Section 2(3)(c) of this administrative regulation.

(6) The Kentucky affiliate shall, by March 1 of each year, determine the names of the incentive winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the Authority.

(7) The Authority shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the Authority by the Kentucky affiliate.

(8) After receiving notification of an award, each incentive winner shall be required to return an enclosed claim form for the award that certifies that the incentive winner is entitled to the award and that certifies the incentive winner’s taxpayer ID number or Social Security number. The claim form shall be delivered to the Authority no later than December 31 of the same year in which the Authority notified the incentive winner of the award pursuant to subsection (7) of this section.

(9) The claim form shall be the form “Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders’ Incentive Fund”, KHRA Form HB-2, (12/06).

(10) Any award owing to an incentive winner who cannot be located by December 31 of the year in which the Authority attempted to notify the incentive winner of the award pursuant to subsection (7) of this section shall lapse to the KHBIF.

(11) Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.

(12) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semi-Annual Reports. (1) A semi-annual [Quarterly] report describing a Kentucky affiliate’s progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31 [within thirty (30) days following the close of the calendar year]. If that date [the 30th day following the close of the calendar year] is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semi-annual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand;

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate.

Section 5. Disputes. (1) Any dispute between the Authority and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the Authority, within thirty (30) days of the action or the inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution to the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures. (1) The Authority may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:

(a) Knowingly provides the Authority with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the Authority;

(b) Knowingly fails to furnish within thirty (30) days information the Authority has requested relating to the registration; or

(c) Knowingly violates this administrative regulation in any other manner.

(2) If the Authority denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the Authority shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the Authority shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly provided the Authority with incorrect, false, or misleading information, or has knowingly failed to provide the Authority with requested information, or has knowingly violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;
(b) Uphold the denial or revocation of the registration;
(c) Rescind the denial or revocation of the registration;
(d) Bar the Kentucky affiliate or national breed organization which failed to furnish the requested information or which has knowingly violated this administrative regulation from registering for a period of from (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective; or
(e) Withdraw funds previously allocated to the Kentucky affiliate.

(4) If a Kentucky affiliate’s designee or representative fails to appear at the hearing, the Authority may take one (1) or more of the following actions:
(a) Deny or revoke the registration; or
(b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;
(c) Withdraw funds previously allocated to the state affiliate; or
(d) Reschedule the hearing.

(5) For a second or subsequent violation of this administrative regulation, the Authority may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for period of from one (1) to twenty (20) years.

(6) The Authority shall notify the Kentucky affiliate in writing of the action taken by the Authority.

(7) If the evidence available to the Authority indicates that an individual acting on behalf of a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, knowingly provided the Authority with incorrect, false, or misleading information, knowingly failed to provide the Authority with requested information, or knowingly violated this administrative regulation in any other manner, the Authority may condition the continuance registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Registration of State Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/06); and
(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

TERESA J. HILL, Secretary
WILLIAM STREET, Chairman
CHRISTOPHER L. LILLY, Commissioner
APPROVED BY AGENCY; December 14, 2006
FILED WITH AGENCY: December 15, 2006 at 9 a.m.
CONTACT PERSON: Mr. Jamie Haydon, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Family Support
Department for Community Based Services
(As Amended at ARRS, March 13, 2007)

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

stances are unchanged; or
(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.
(6) If a husband and wife are living together, an income charge after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability as in accordance with;
(a) 907 KAR 1:011, Sections 1(5) [44], 5(5), (6), 7(13), 10, 11;
(b) 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4);
(c) 907 KAR 1:645;
(d) 907 KAR 1:650, Section 1[6];
(e) 907 KAR 1:650, Sections 1(1), (5), 2(1), (2), (3), and (4).
(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:
(a) Furnish a Social Security number; or
(b) Apply for a Social Security number, if a Social Security number has not been issued.
(c) If potential eligibility exists for SSI, an application for SSI shall be mandatory.
(d) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional state supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:
(a) Requires a full-time living arrangement;
(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and
(c) Resides in a personal care home and is at least eighteen (18) years of age in accordance with 921 KAR 20:036, Section 3(9)(a); or
2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 921 KAR 20:041, Section 3(14); or
3. Receives caretaker services and is at least eighteen (18) years of age.
(2) A full-time living arrangement shall include:
(a) Residence in a personal care home that:
(i) Meets the requirements and provides services established in 902 KAR 20:035 and
(ii) Is licensed under KRS 216B.010 to 216B.131;
(b) Residence in a family care home that:
(i) Meets the requirements and provides services established in 902 KAR 20:041 and
(ii) Is licensed under KRS 216B.010 to 216B.131; or
(c) A situation in which a caretaker is required to be hired to provide care other than room and board.
(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to a:
   a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or
   b. Residence; or
2. Death of the state supplementation recipient; and
(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.
(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.
(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the

month after the month of:
1. Discharge to a:
   a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;
   b. Another personal care or family care home; or
   c. Residence; or
2. Death of the state supplementation recipient; and
(b) Notify a local county department office within five (5) working days of the:
1. Death or discharge of the state supplementation recipient; or
(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)(2) of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.
(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

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

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:
(a) 907 KAR 1 640, Sections 1(1), (6), (7), (10), and 3(4);
(b) 907 KAR 1 645;
(c) 907 KAR 1 650, Section 1(5); (6);
(d) 907 KAR 1 650, Sections 1(1), (5), 2(1), (2), (3), and (4).
(2) An individual or couple shall not be eligible if countable resources exceed the limit of:
(a) $2000 for individual; or
(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:
(a) 907 KAR 1 640, Sections 1(1), (6), (7), (10), and 3(4);
(b) 907 KAR 1 645;
(c) 907 KAR 1 650, Section 1(5); (6);
(d) 907 KAR 1 660, Sections 1(1), (5), 2(1), (2), (3), and (4).
(2) The optional supplementation payment shall be determined by:
(a) Adding:
   1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
   2. A payment made to a third party on behalf of an applicant or
recipient; and
(b) Subtracting the total of paragraph (a) and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:
(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
   1. Himself; and
   2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.
(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:
(a) A resident of a personal care home made on or after January 1, 2007, $1,143 [2006, $1,133];
(b) A resident of a family care home made on or after January 1, 2007, $725 [2006, $726]; or
(c) Caretaker:
   1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2007, $655 [2006, $665].
   2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2007, $1,003 [2006, $993]; or
   3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2007, $1,028 [2006, $1,016].

(2)(a) In a couple case, if both are eligible, the couple’s income shall be combined prior to comparison with the standard of need.
(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
(b) Social Security Administration notifies the department that the admission shall be temporary; and
(c) Purpose shall be to maintain the recipient’s home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
(a) The non-SSI recipient meets the requirements of subsection (1)(a) of this section;
(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:
   1. Notification of the temporary admission; and
   2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:
(a) Hospital;
(b) Psychiatric hospital; or
(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

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

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

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:
(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem:
   1. For a state supplementation recipient in the personal care home’s care; and
   2. As of the first calendar day of a qualifying month;
(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and
(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:
   1. Be licensed in accordance with KRS 2168.010 to 2168.131;
   2. Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds who have at least one of the following:
      a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;
      b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer’s, and similar diagnoses; or
      c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
   3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
   4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;
   5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and
   6. File an "STS-1, Mental Illness/Mental Retardation, IM/MP Program Application for Benefits", Application for Mental Illness or Mental Retardation Supplement Program Benefits" with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter;
   a. Quarters shall begin in January, April, July and October.
   b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of pro-
gram certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail an "STS-3.2 Notice of Decision to Personal Care Home" to a personal care home following:
   a. Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and
   b. Approval or denial of an application.

(4) A personal care home shall:
   a. Provide the department with an "STS-3 Mental Illness/Mental Retardation (MI/MR) Supplement Program [Monthly Report Form]" that:
      1. Lists every resident of the personal care home who was a resident on the first day of the month;
      2. Lists the resident's Social Security number; and
      3. Annotates the form, in order to maintain confidentiality, as follows with:
         a. Star indicating a resident has a mental illness or mental retardation diagnosis;
         b. Check mark indicating a resident receives state supplementation; and
         c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and
   b. Mail the STS-3 ["Monthly Report Form"] to the department postmarked by the fifth working day of the month.
(5) The monthly report shall be used by the department for:
   a. Verification as specified in subsection (4)(a) of this section;
   b. Payment; and
   c. Audit purposes.

(6) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(7) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) A personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

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

(3) Initial basic training shall:
   a. Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and
   b. Be in the quarter during which the STS-1 ["Application for Mental Illness or Mental Retardation-Supplement Program Benefits"] is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.
   a. If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

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

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home:
   a. Advanced level training shall be provided through a one (1) day workshop.
   b. Each advanced level workshop shall consist of two (2) hour sessions per day.
   c. Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

   d. Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide advanced training within five (5) working days a:
   a. Certificate to direct care staff who complete the workshop; and
   b. Listing to the department of staff who completed the training workshop.

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

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

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

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:
   1. May be separate from an inspection in accordance with KRS 216.530; and
   2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is [after the initial survey may be] completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)(2) of this section.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:
   a. Review and interview residents and staff; and
   b. Review records to assure the following criteria are met:
      1. Except for a specialized personal care home, certification is on file at the personal care home to verify the staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;
      2. The personal care home:
         a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and
         b. Maintains documentation of attendance at the in-service training for all direct care staff;
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3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:
   a. Demonstrates a knowledge of psychotropic drug side effects; and
   b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.
   a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.
   b. An Individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

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

(4) If thirty-five (35) percent mental illness or mental retardation population, as specified in Section 12(1)(c)2 of this administrative regulation, is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this subsection.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "STS-4, Mental Illness or Mental Retardation Supplement [Person with Mental Illness or Mental Retardation Supplement Program] Certification Survey" within fifteen (15) working days of an:
   (a) Initial survey; or
   (b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department:
   (a) Monthly; and
   (b) By the fifth working day of each month for the prior month.

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

(9) If a criterion for certification is not met, the department shall mail an STS-2 [a "Notice of Decision to Personal Care Home"] to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2 ["Notice of Decision to Personal Care Home"]:
   (a) Relevant to unmet certification criteria specified on the STS-4 ["Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey"] and
   (b) Within ten (10) working days after the STS-2 ["Notice of Decision to Personal Care Home"] is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:045.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, as specified in Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

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

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "STS-1, Mental Illness/Mental Retardation (MI/MR) Sup-

3207
ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF PUBLIC COMMENTS

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 32:030. Pretransport requirements.

RELATES TO. KRS Chapters 224.01, 224.10, 224.40, 224.46, 224.99, 40 C.F.R. 262 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 40 C.F.R. 262 Subpart C

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation implements [re-implant] provisions of KRS 224.46-510 and 40 C.F.R. 262 Subpart C by establishing [49 C.F.R. Subpart C and to establish] requirements for labeling, marking, placarding, and accumulation time. This administrative regulation differs from the corresponding federal statute by requiring immediate notification in the event of a release of hazardous materials in Sections 5 and 6. Kentucky has application, approval and fee requirements for generation treating hazardous waste on-site.

Section 1. Packaging. The subject matter shall be governed by 40 C.F.R. 262.30, effective July 1, 2005.

Section 2. Labeling. The subject matter shall be governed by 40 C.F.R. 262.31, effective July 1, 2005.


Section 5. Accumulation Time. (1) The subject matter shall be governed by 40 C.F.R. 262.34(a) through (i), effective September 9, 2005.

(2) In the event of a fire, explosion, or other release which could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator shall immediately notify the cabinet in accordance with KRS 224.01(40)(f)(1) and (f)(2).

Section 6. On-site Treatment by Generators. (1) Hazardous waste may be treated on-site in tanks, containers, and drip pads, provided:

(a) A generator and small quantity generator complies with the hazardous waste accumulation provisions of Section 5 of this administrative regulation;

(b) A limited quantity generator complies with the provisions of 401 KAR 31-010. Section 5 (b) The generator notifies the cabinet of the intent to treat hazardous waste as required by 401 KAR 32-010, Section 3; and

(c) The cabinet issues written approval to the generator. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224.

(2) A generator shall not conduct the on-site treatment of hazardous waste unless all of the requirements of subsection (1) of this section have been met.

(3) If it is determined that the approved process is not protective of human health, safety, and the environment, the cabinet may revoke the approval and all treatment activities shall cease.

(4) The cabinet shall refund any fees paid in accordance with 401 KAR 39-110, Section 2(4), if it fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste.

Section 4. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable DOT U.S. Department of Transportation regulations on packaging under 49 C.F.R. Subpart C.

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable DOT U.S. Department of Transportation regulations on hazardous materials, under 49 C.F.R. Subpart C.

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable DOT U.S. Department of Transportation regulations on hazardous materials, under 49 C.F.R. Subpart C.

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110-galons or less used in each transportation in accordance with the requirements of 49 C.F.R. Subpart C. The following words and information shall be displayed: "Hazardous Waste -- Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency."

Generator's Name and Address:

Manifest Document Number:

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall offer the initial transporter the appropriate placard according to DOT U.S. Department of Transportation regulations for hazardous materials under 49 C.F.R. Subpart C and Subpart F.

Section 5. Accumulation Time. (1) Except as provided in subsections (3), (4), (5), and (6) of this section and Section 6 of this administrative regulation, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status if:

(a) The waste is placed:

(1) In containers and the generator complies with 401 KAR 35-100, 35-275, 35-280, and 35-381; or

2. In tanks and the generator complies with 401 KAR 35-100 and forty-five (45) days or forty-five (45) days prior to closing a tank, the generator notifies the cabinet in writing of the intent to begin closure.

3. On the day the generator complies with 401 KAR 35-280 and maintains the following records at the facility:

(a) A documentation of procedures that will be followed to ensure that all waste is removed from the drip pad and associated collection system at least once every ninety (90) days;

(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the cump collection system and the date and time of removal;

(c) The cabinet is in containment buildings and the generator complies with 401 KAR 35-245, and placed its professional engineer certificate that the building complies with the design standards specified in Section 2 of 401 KAR 35-245 in the facility's operating report no later than sixty (60) days after the date of initial operation of the unit. After February 18, 1993, professional engineer (PE) certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

A. A written description of procedures to ensure that each waste volume remain in the unit for no more than ninety (90) days, a written description of the waste generation and management practices for the facility showing that they are consistent with recycling the ninety (90)-day limit, and documentation that the procedures are complied with; or

B. Documentation that the unit is emptied at least once every...
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3. The generator shall ensure that all employees are thoroughly familiar with proper waste-handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

4. The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

a. In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

b. In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as practicable, clean up the hazardous waste and any contaminated materials or soils.

c. In the event of a fire, explosion, or other release which could threaten human health or the environment, the generator shall have knowledge that a spill has reached surface water. The generator shall immediately notify the cabinet in accordance with KRS 224.01-400(11) and (12).

5. A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who shall transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal, may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of subsection (4) of this section.

6. A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste on-site in excess of 600 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he transports his waste, or offers his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR Chapters 34 and 36 and the permit requirements of 40 CFR Chapter 39 unless he has been granted an extension to the 180-day period. Such extension may be granted by the cabinet if hazardous wastes remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

Section 6—On-site Treatment by Generators.

1. A generator may treat his own hazardous waste on-site in tanks, containers, and drip pads provided:

(a) The generator complies with the hazardous waste accumulation provisions of Section 5 of this administrative regulation.

(b) The small quantity generator complies with the hazardous waste accumulation provisions of Section 6 of this administrative regulation.

(c) The generator complies with the provisions of Section 5 of 401 KAR 31:010.

(d) The generator notifies the cabinet of the intent to treat hazardous waste as required by Section 3 of 401 KAR 32:010.

(e) The cabinet issues written approval to the generator. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224.

2. A generator shall not conduct the on-site treatment of hazardous wastes unless all of the requirements of subsection (1) of this section have been met.

(a) It is determined that the approved treatment is not protective of human health, safety, and the environment, the cabinet may revoke the approval and all treatment activities shall cease.

(b) The cabinet shall refund any fees paid in accordance with Section 2(4) of 401 KAR 30:110 if it fails to provide a written determination within sixty (60) days of receipt of a generator’s request to treat hazardous waste.

TERESA J. HILL, Secretary
APPROVED BY AGENCY: November 13, 2005
FILED WITH LRC: November 28, 2006 at 10 a.m.
CONTACT PERSON: R. Bruce Scott, P.E., Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, 3209
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bruce Scott, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation implements provisions of KRS 224.46-510 and 49 C.F.R. Subpart C by establishing requirements for labeling, marking, placarding, and accumulation time.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for labeling, marking placarding, and accumulation time.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing requirements for labeling, marking, placarding, and accumulation time.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will assist in the effective administration of the statute by providing further detail in regards to labeling, marking, placarding, and accumulation time.
(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 reference 40 C.F.R. Part 252 for information related to this chapter.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulations to remain current with federal regulations and will introduce a new approach that will make future regulatory updates easier.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by updating information related to labeling, marking, placarding, and accumulation time.
(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by providing further detail in regards to labeling, marking placarding, and accumulation time.
(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 generators in the Commonwealth of Kentucky. There are 2,604 generators in Kentucky. They are broken down into the following groups: 300 large quantity generators, 421 small quantity generators and 1,883 conditionally exempt small quantity generators.
(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: Changes to this regulation include paperwork reduction. Generators of hazardous waste will benefit from lesser reporting requirements.
(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)?
None. A savings will be realized.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)?
Savings due to lesser reporting requirements.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.
(a) Initially: NA
(b) On a continuing basis: NA
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants from the federal Environmental Protection Agency.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement 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.
(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who generate, transport, or store hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

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 any units of state or local government that generate hazardous waste.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation implements provisions of KRS 224.46-510 and 49 C.F.R. Subpart C by establishing requirements for labeling, marking, placarding, and accumulation time.
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 regulation will not effect expenditures or revenues.
5. 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 regulation will not effect expenditures or revenues.
(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 will 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 regulation will not generate any revenue.
(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.
(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): NA
Expenditures (+/-): NA
Other Explanation: NA

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Administrative Hearings
(Amended After Comments)
401 KAR 100:010. General administrative hearing practice provisions.

RELATES TO: KRS 146.200-146.360, 146.990, 149.344, 149.345, 149.348, 151.182, 151.184, 151.237, 151.390, Chapters 223, 224

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346 [Chapter 134A], 151.125, 151.182, 151.184, 151.186, 151.237, 224.10-00, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-740, 224.40-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 146 relating to solid waste, KRS Chapter 149 relating to further harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings on violations of those chapters and administrative regulations promulgated

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of the evidence.

(2) Hearing officer's duties. The hearing officer shall in the hearing officer's discretion:
(a) Administer oaths and affirmations;
(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;
(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;
(d) Rule on procedural requests or similar matters;
(e) Hold prehearing conferences for settlement or simplification of the issues;
(f) Regulate the course of the administrative hearing;
(g) Rule on offers of proof and receive relevant evidence;
(h) Take any other action authorized by this administrative regulation, KRS Chapters 146, 149, 151, 223, 224 and the administrative regulations promulgated pursuant thereto; and
(i) Make or recommend decisions or reports in accordance with KRS Chapters 146, 149, 151, 223, 224 and the administrative regulations promulgated pursuant thereto.

(3) Prehearing conference. A hearing officer may order a prehearing conference:
(a) To simplify and clarify issues;
(b) To receive stipulations and admissions;
(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and
(d) For any other purposes as may be appropriate [as including but not limited to examination of the record and the resolution of issues].

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:
(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.
(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:
1. There is no disputed issue as to any material fact; and
2. The moving party is entitled to a summary disposition as a matter of law.
(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted, and if the hearing officer believes that the issuance of an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate

(5) Hearing officer's report.
(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and to attorneys of record. The parties may file exceptions and responses to the exceptions as provided under KRS 151.184 and 224.10-440. There shall be no other or further submissions.
(b) The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be imposed irrespective of any court decision rendered in any party. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in the report.

(5) Secretary's order.
(a) The secretary shall consider the report and recommended
order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and Office of Administrative Hearings personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing. Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(b) Sanctions. The presiding hearing officer in a case, [who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why the offending party's claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.]

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) Documents required to be served, including administrative summons, shall be served by one (1) of the following methods.

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service.

To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit or registration by the cabinet, upon a person specified as an operator in the permit or registration application, or upon a person certified by the cabinet or applying for certification, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit or registration application (at the address specified in the permit, at the permanent address for the permittee or operator specified in the permit or registration application, or at any new address that has been specified in writing by the permittee or operator), or the certified operator or the person requesting certification (at the address specified in the certification, at the permanent address for the certified operator specified in the certification request, or at any new address that has been specified in writing by the operator).

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or court rules for the court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the Office of Administrative Hearings shall [must] be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of documents relating to the proceeding shall be made upon the attorney of record in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the Executive Director of the Office of Legal Services and shall be effective upon receipt by the Office of Legal Services [commissioner of the Department of Law and shall be effective upon receipt by the Department of Law].

Section 6. Administrative Summons and Public Notice of Hearing. Upon receipt of an initiating document, the Office of Administrative Hearings shall promptly serve in accordance with 400 KAR 1:002 and Section 5 of this administrative regulation, a copy of the documents upon all parties. In addition, along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and administrative regulations involved.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the Office of Administrative Hearings when the document is received [and-stamped] by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any
part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the Office of Administrative Hearings shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly inform the Office of Administrative Hearings of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, that person will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Administrative Hearings employees will be at rates which cover the cost of staff time, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 445.000 and 400 KAR 1:030.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under KRS 151.182(2) or 224.10-420(2) or if an extension is contrary to law or administrative regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. At the request of the parties to an administrative hearing, the Office of Administrative Hearings shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings [to-be-held-before] or at the taking of depositions [to-be-held-before-either-officers]. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the Office of Administrative Hearings or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings. Administrative hearings shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed upon by the parties or authorized by KRS 224.40-310(5)(6).

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A petitioner shall set forth a statement describing [establishing] [setting forth] the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection do not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek the remedies identified in subsection (2) of this section whenever:

(a) It has reason to believe that a violation of KRS Chapters 146, 148, 151, 223, 224, the administrative regulations promulgated pursuant thereto, or a permit, registration or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit revocation, termination, denial, modification or suspension of a permit, registration or certification;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalties;

(d) A determination, where expressly authorized by statute, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) Cost recovery where expressly authorized by statute; or

(f) Any other relief to which it may be entitled by KRS Chapters 146, 148, 151, 223, 224 or the administrative regulations promulgated pursuant thereto.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the Office of Administrative Hearings incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief; and

2. A request for specific relief.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the Office of Administrative Hearings an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the [alleged] facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall bear [have] the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default. (a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may at his discretion or upon motion [shall] issue an order to show cause why the per-
son should not be deemed to have waived his right to an admin-
istrative hearing and why a report and recommended order adverse
to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the
hearing officer shall recommend to the secretary the entry of a final
order in conformity with the relief requested by the cabinet in its
administrative complaint.

(c) If the person against whom the administrative complaint is
filed fails to appear at an administrative hearing, the person shall
be deemed to have waived his right to a hearing and the hearing
officer shall recommend to the secretary the entry of a final order in
conformity with the relief requested by the cabinet in its administra-
tive complaint.

Section 13. Review of Cabinet Orders and Final Determina-
tions (1) Who may file. A person who considers himself aggrieved
by an order or final determination of the cabinet may file a petition
for review of the order or final determination pursuant to this sec-
tion. This section also applies to petitions for review of a draft per-
mit for construction or expansion, when the expansion results in
substantial additional capacity, a waste disposal facility, made
pursuant to KRS 224.40-310(6).

(2) The petition for review shall be filed with the Office of Ad-
ministrative Hearings within thirty (30) days after the petitioner has
had actual notice of the order or final determination complained of,
or could reasonably have had notice. Failure to timely file a petition
for review shall constitute a waiver of an administrative hearing and
the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:
(a) A statement of the facts entitling the one requesting review
administrative relief;
(b) An explanation of each specific alleged error in the cabi-
et's determination;
(c) A request for specific relief;
(d) If the petition challenges an order or final determination on
a permit, the name of the permittee and the permit number; and
(e) Other relevant information.

(4) Answer or responsive pleading. The respondents shall file
an answer or other responsive pleading within thirty (30) days of
service of the petition specifically admitting or denying facts or
alleged errors stated in the petition and setting forth any other mat-
ters to be considered on review.

(5) Amended petition. A petition may be amended once as a
matter of right prior to the filing of an answer and thereafter by
leave of the hearing officer upon proper motion. The respondents
shall have ten (10) days from the filing of a petition amended as a
matter of right to the time remaining for filing an answer to the
original petition, whichever is longer, to file an answer. If the hear-
ning officer grants a motion to amend a petition, the time for an
answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties shall be given written notice
of the time and place of the administrative hearing at least twenty-
one (21) days prior to the hearing unless the twenty-one (21) days
period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not
stay the effectiveness of the cabinet's determination pending comple-
tion of administrative review.

(8) Default. (a) If the petitioner fails to timely comply with a prehearing
order of a hearing officer, the hearing officer may at his discretion
or upon motion [shall] issue an order to show cause why that per-
son should not be deemed to have waived his right to an administra-
tive hearing and why his petition should not be dismissed
(b) If the order to show cause is not satisfied as required, the
hearing officer shall recommend to the secretary the entry of a final
order finding that the petitioner has waived his right to an adminis-
trative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to
appear at a hearing, the person shall be deemed to have waived
his right to a hearing and the hearing officer shall recommend to
the secretary the entry of a final order finding that the person has
waived the right to an administrative hearing and dismissing the
petition.

(d) Burden of proof. The petitioner shall bear [have] the burden
of going forward to establish a prima facie case and the ultimate
burden of persuasion as to the requested relief.

Section 14. Procedures for Abate or Alleviate Orders (1) In
general. If pursuant to KRS 224.10-410, the secretary issues an
order to abate or alleviate, the cabinet shall provide the person to
whom the order was issued an opportunity to be heard. The hold-
ing of an administrative hearing pursuant to this section shall not
operate to terminate or stay the order or the affirmative obligations
imposed on a person by the order, unless the hearing officer shall
find on the record that the obligations have been met or that the
order was improper or inappropriate

(2) Notice. (a) Upon issuance of an order to abate or alleviate under the
provisions of KRS 224.10-410, the secretary shall file with the Of-

lice of Administrative Hearings a copy of the order.

(b) Upon filing an order to abate or alleviate, the Office of Ad-
mnistrative Hearings shall issue an administrative summons pur-
suant to Section 6 of this administrative regulation and shall set the
time and place for an administrative hearing to be held not more
than ten (10) days from the date the order to abate or alleviate was
signed by the secretary.

(3) Response. (a) The person named in the order to abate or alleviate shall
prior to or at the hearing file a response to the order specifically
admitting or denying facts alleged in the order, setting forth other
exemptions or defenses to be considered on review, and setting forth evidence, if
any, that the condition or activity does not violate the provisions of
KRS 224.10-410.

(b) In lieu of a response, the person named in the order to
abate or alleviate may contact the office in writing or by other
means and state that an administrative hearing is not needed, and
that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be
held in accordance with Section 3 of this administrative regulation.
In addition the hearing officer may require the parties to submit
proposed findings of fact and conclusions of law to be considered
at the hearing which may be orally supplemented on the record at
the hearing, or if written proposed findings of fact and conclusions
of law have not been submitted at the hearing, they may be orally
presented for the record at the administrative hearing.

(5) Default. Upon notification by the person named in the order
to abate or alleviate that a hearing is not needed or upon failure of
the person to appear at the administrative hearing, the hearing
officer shall promptly prepare a report stating that the hearing has
been waived and the order to abate or alleviate stands as issued.

(6) Effect of proceedings. The scheduling of an administrative
hearing pursuant to this section shall not operate to terminate or
stay the effect of the order or to relieve the person named in the
order from performing the affirmative obligations imposed in the
order to abate or alleviate.

Section 15. Procedures for Orders for Remedy under KRS
151.297. (1) In general. If pursuant to KRS 151.297, the secretary
issues an order for remedy, the cabinet shall provide the person to
whom the order was issued an opportunity to be heard. The hold-
ing of an administrative hearing pursuant to this section shall not
operate to terminate or stay the order or the affirmative obligations
imposed on a person by the order, unless the hearing officer shall
find on the record that the obligations have been met or that the
order was improper or inappropriate.

(2) Notice. (a) Upon issuance of an order for remedy under the
provisions of KRS 151.297, the secretary shall file with the Office of Adminis-
trative Hearings a copy of the order.

(b) Upon filing an order for remedy, the Office of Administrative
Hearings shall issue an administrative summons pursuant to Sec-

ion 5 of this administrative regulation and shall set the time and
place for an administrative hearing to be held not more than five (5)
working days from the date the order for remedy was signed by the
secretary.

(3) Response. (a) The person named in the order for remedy shall prior to or
at the hearing file a response to the order specifically admitting or
denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(4) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with Section 3 of this administrative regulation. In addition the hearing officer may require the parties to submit prepared findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written, proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order for remedy that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order for remedy stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order for remedy.

Section 16. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186 or 224.10-470 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report summarizing procedures to be followed in order to comply with the court's order. The hearing officer shall [will] receive such reports and enter special orders governing the handling of matters remanded to him for further proceedings by any court.

Section 17. Requirement to File Written, Direct Testimony and Its Use in Administrative Proceedings Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 401 KAR 100.010, Section 3(1)(b) pertaining to the admission of written testimony, the hearing officer may require in all cases of cases the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing. The hearing officer may require such written, direct testimony of any or all witnesses. The hearing officer shall allow such written testimony to be supplemented by additional evidence whenever the ends of justice require consideration of additional evidence.

(2) Written testimony shall be accompanied by an affidavit of the witness verifying that the written, direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true. Any witness whose written testimony is admitted shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness. At the formal administrative hearing the witness shall again verify that the written, direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true, and the witness shall be available for cross examination. If a witness fails to verify his or her written, direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record unless all parties agree otherwise.

(3) Written testimony shall be set forth in a "question and answer" format.

(4) If written testimony that is based upon a separate document or writing is submitted into the record, that document or writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(5) Parties shall have a reasonable opportunity prior to the formal administrative hearing to object to all or portions of any written testimony or any accompanying exhibit and to obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing. Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 18. Waiver and Waiver Revocation in Administrative Proceedings Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) The parties may agree to waive in writing the deadlines of KRS 224.10-440(3) by executing a waiver agreement and filing it in the Office of Administrative Hearings. Any such waiver by a party shall be signed by the party or the party's counsel to be effective.

(2) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

Section 19. Motions for Deadline Extensions in Administrative Proceedings Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the Office of Administrative Hearings a motion no less than forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline. The written request for extension shall include a proposed date certain by which the report and recommended order shall be completed.

(2) A party or hearing officer objecting to the extension shall file any response in opposition to the motion no later than seven (7) calendar days from receipt of the motion. The mail rule provisions set forth in 400 KAR 1.050, Section 9(3) shall not be applicable in calculating the deadline for the filing of any response.

(3) Upon expiration of the time period for motions and responses to motions, the Office of Administrative Hearings shall immediately tender the motion and any response to the secretary or the secretary's designee.

(4) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing objections to any motion for extension.

LLOYD R. CRESS, Undersecretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: January 10, 2007
FILED WITH LRC: January 12, 2007 at 11 a.m.
CONTACT PERSON: Vaughn Murphy, Executive Director, Office of Administrative Hearings, 35-56 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7312, fax (502) 564-4973.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Vaughn Murphy
(1) Provide a brief summary of:
(a) What this administrative regulation does: It establishes procedures for conducting administrative hearings held pursuant to KRS Chapters 146, 149, 151, 223, and 224.
(b) The necessity of this administrative regulation: Uniform procedures are necessary to maintain an efficient and transparent administrative hearing process.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Under circumstances enumerated in the statutes, the cabinet is required to conduct administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It gives clarity and direction regarding the administrative hearing process to parties participating in an administrative hearing authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: This regulation amendment adds sections to the existing regulation that establish the method that parties and hearing officers shall use for waiving the time deadlines or seeking extensions of the time deadlines enumerated in KRS 224.10-440(3) for completion of the administrative hearing process, and that establish the standards for when and how written, direct testimony shall be used in formal administrative hearings. It also updates the existing regulation with minor changes, including references to KRS Chapter 149, which authorizes implementation of timber harvesting best management practices and enforcement of these regulations via administrative hearings held pursuant to KRS 224.10-440.

(b) The necessity of the amendment to this administrative regulation: KRS 224.10-440(2) states that "the secretary may promulgate administrative regulations to require that direct testimony be filed in writing prior to the hearing, either for all or some categories of cases." KRS 224.10-440(4) states that "the secretary may promulgate administrative regulations to establish procedures and deadlines for submitting a written request for an extension pursuant to subsection (3) of this section."

(c) How the amendment conforms to the content of the authorizing statutes: Per the statute, the amendment establishes procedures and deadlines for submitting written requests for extensions of the time deadlines embodied in KRS 224.10-440(3), and establishes how written, direct testimony shall be used in formal administrative hearings pursuant to KRS 224.10-440(2).

(d) How the amendment will assist in the effective administration of the statutes: Parties are given specific guidelines on how to obtain time deadline extensions. Clarity is also provided on the use of written, direct testimony in administrative hearings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities subject to an enforcement action, or seeking to contest a final determination by the cabinet whose resulting administrative hearing process is conducted pursuant to KRS Chapters 146, 149, 151, 223, or 224.

(4) Provide a summary 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 seeking extensions to the administrative hearing process time deadlines set forth in KRS 224.10-440(3) will be required to move for the extension in writing. The motion will be ruled upon by the cabinet secretary. Parties agreeing to waive the time deadlines will be required to do so in writing. In administrative cases in which the hearing officer requires the use of written, direct testimony, the parties shall be required to record direct testimony in written, "question and answer" format and submit it to the Office of Administrative Hearings by a deadline in advance of the actual formal administrative hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the parties for seeking extensions to statutory deadlines will be minimal. Involving the submission of a written motion. No cost is involved for the waiver, as the Office of Administrative Hearings submits waiver forms to the parties. Regarding written, direct testimony, cost impacts upon parties to hearings are undetermined. Parties are likely to incur more costs prior to hearings due to the expense of preparing and tendering prefilled testimony. This cost should be offset to some degree by the shorter hearing and consequently shorter hearing transcript, which is normally a significant expense for parties.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties may use the process set forth in this regulation to seek extensions to the administrative hearing process, as needed, or waive the statutory deadlines. Use of written, direct testimony may save time and resources due to abbreviated formal administrative hearings. Moreover, parties will benefit from expedited conclusions to what might otherwise be lengthy hearings.

(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 this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering is not practical because many administrative hearings involve multiple parties, and it would be unmanageable and inequitable to apply different rules to the various parties.

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 local government or local government division that is subject to a cabinet enforcement action whose resulting hearing is governed by KRS Chapters 146, 149, 151, 223, or 224, or any that have been subject to a cabinet final determination, such as issuance of a permit, whose resulting right of administrative hearing is governed by KRS Chapters 146, 149, 151, 223, or 224.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Statutory authority for the regulation is found at KRS 151.125, 149.270, 149.344, 149.346, 151.182, 151.184, 151.186, 151.257, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-450, and 224.10-470. Most of the proposed substantive amendments to the regulation are authorized by KRS 224.10-440.

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.

(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.

(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 (+/-):

Expenditures (+/-):

Other Explanation:
Section 1. Definition. "Board" means Kentucky Board of Tax Appeals.

Section 2. Formal Administrative Hearings. A person aggrieved by a final ruling, order, or determination of an agency of state or local government affecting revenue and taxation may petition the board for a formal hearing in accordance with KRS Chapter 13B.

(1) A petition shall be:
   (a) In writing;
   (b) Signed by the petitioner;
   (c) Stated "Petition of Appeal;
   (d) Filed in person or mailed by certified mail, return receipt requested, to the Kentucky Board of Tax Appeals and received by the board within thirty (30) days of the date of issuance of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal; and
   (e) Contain a statement of all relevant issues of fact and law, along with a copy of any authority relied upon by the party filing the appeal.

(2) Filing by facsimile or other electronic means shall not be accepted.

(3) If an appeal originates from a final ruling, order, or determination of a county board of assessment, the appealing party shall file:
   (a) An original and four (4) copies of the Petition of Appeal;
   (b) Five (5) copies of the county board of assessment's final ruling, order, or determination; and
   (c) Five (5) copies of any authority referenced in subsection 2(e) of this section.

(4) If an appeal originates from a final ruling, order, or determination of a state governmental agency, the appealing party shall file:
   (a) An original and four (4) copies of the Petition of Appeal;
   (b) Five (5) copies of the final ruling, order, or determination of the agency of the state government; and
   (c) Five (5) copies of any legal authority referenced pursuant to subsection 2(e) of this section.

(5) If a party who appeals fails to comply with any part of subsections 1, 2, 3, 4, or 5 of this Section, the board or the hearing officer may:
   (a) Dismiss the appeal for failure to comply; or
   (b) If the appeal is timely filed, notify the appealing party of deficiencies and allow the appealing party fifteen (15) days to amend the petition.

(6) Upon receiving a Petition of Appeal, the Kentucky Board of Tax Appeals shall provide notice to the appellee that a Petition of Appeal has been filed. The appellee or his attorney shall file an entry of appearance within thirty (30) days of the date of the notice.

Section 3. Representation in Proceedings Before the Board.

(1) If the appeal is by an individual, the individual whose tax liability is at issue shall appear and represent himself of herself (themselves) or engage legal counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) If the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in Section 3(1) of this administrative regulation, the entity shall be represented by an attorney on all matters before the board, including the filing of the Petition of Appeal.

(4) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3(002).

Section 4. Discovery. (1) A request to obtain discovery shall be filed with the board or hearing officer in conformity with any order pertaining to discovery as the board or hearing officer may issue. If the board or hearing officer has not issued an order setting forth the procedures for request for discovery, then a party may request discovery pursuant to subsection 2(d) of this section.

(2) A request for discovery shall:
   (a) Specify the type of discovery requested;
   (b) If applicable, describe in sufficient detail;
   (c) The names and addresses of persons or legal entities from whom discovery is desired;
   (d) The general nature of the documents or other items requested.

(3) The location of property subject to discovery; and
   (e) State the reason for requesting discovery.

(4) Objections to a discovery request by any other party shall be filed with the board or hearing officer within fifteen (15) days from the date discovery is requested.

(5) Discovery may be obtained without prior order of the board or hearing officer pursuant to Kentucky Rules of Civil Procedure 30, 31, 33, 34, and 38, as amended.

(6) A party may serve depositions of individuals or of public or private legal entities.

(b) Written interrogatories.

(c) Permission to enter upon, inspect, or photograph real property or to photograph or inspect personal property.

(d) Physical or mental examination of a party, or personal or professional examination of a party.

(e) Admissions of a party.

(f) The board or hearing officer may deny, limit, or require discovery.

(2) (b) Sanctions. If a party fails to obey an order regarding discovery, the board or hearing officer may order that:

   (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

   (b) Noncomplying party shall be prohibited from introducing related documents or testimony on matters at the hearing; or

   (c) Appeal be dismissed or relief be granted as requested by the opposing party.

(3) (d) A response to discovery under subsection 1(b) of this section shall not be filed with the board unless required by an order of the board or hearing officer.

Section 5. Subpoenas. Upon good cause shown, the board or hearing officer shall issue a subpoena to any party upon request, provided the request for subpoena shall be received by the board or hearing officer at least sixty (60) days prior to the hearing.

Section 6. Prehearing Filings. (1) A party shall file with the board or hearing officer an original and four (4) copies of a document containing the following:

(a) A summary of the party's position on any issue of fact in dispute;

(b) A summary of the party's position on any issue of law raised by the appeal;

(c) A written statement of facts to which the party agrees and any facts which a party does not dispute;

(d) A list of the names, addresses, and phone numbers (if known) of all witnesses which the party expects to call to testify as a witness at the hearing; and

(e) A copy of all exhibits which the party intends to introduce at the hearing.
Section 10. [91] Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or a part of the proceeding, in which event the following procedure shall apply.

(1) The moving party shall assert that there are no disputed material facts as to one or more of the issues before the board or hearing officer. The moving party shall include in its motion a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery authorized by the board or hearing officer, including answers to interrogatories, admissions, and subpoenas. Facts stated in the original petition or appeal, as well as any documents or exhibits attached to the petition, may be relied upon as undisputed material facts by the appellate.

(2) The moving party shall state that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation. The moving party shall submit a copy of any legal authority which supports the moving party's position on any legal issue before the board or hearing officer.

(3) Within twenty (20) days after a party moves for summary disposition and complies with the requirements set forth in Section 9(1) and (2) of this administrative regulation, any other party may submit to the board or hearing officer:

(a) An acknowledgment that there are no disputed material facts as to any material fact asserted by the moving party pursuant to Section 9(1) and (2) of this administrative regulation. If the matter is factually disputed, the other party shall submit any affidavit or response to discovery authorized by the board or hearing officer, including any answer to an interrogatory, admission, or deposition, which controverts any material fact asserted by the moving party to be undisputed;

(b) All legal authorities which support the opposing party's position on any legal issue.

(4) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion, shall result in the board or hearing officer assuming there are no factual issues before it to be considered in deciding the legal issues. If the nonmoving party fails to respond to the motion for summary disposition, the moving party shall have ten (10) days from the filing of the motion for summary disposition, in accordance with this administrative regulation and KRS Chapter 13B.

Section 11. Time, KRS 446.030 shall apply to computation of time under this administrative regulation. [Formal Administrative Hearing. A person aggrieved by a final ruling, order, or determination of an agency of state or county government affecting revenue and taxation, may petition the board for a formal hearing in accordance with KRS Chapter 13B,

(1) A petition shall be:

(a) In writing;

(b) Signed by the petitioner;

(c) Stated "Petition for Review";

(d) Filed in person at office of the board or hearing officer at office of the board or hearing officer designated by the board or hearing officer;

(e) Contain a brief statement of the facts and issues in dispute, and

(f) Contain the applicant's position as to the law and facts.

(2) Filings by facsimile or other electronic means shall be accepted.

(3) If an appeal originates from a final ruling, order, or determination of a county board of assessment, the petitioner shall:

(a) File an original and four (4) copies of the petition for appeal; and

(b) Three (3) copies of the board of assessment's appeal final ruling, order, or determination.

(4) If an appeal originates from a final ruling, order, or determination of a state government agency, the petitioner shall:

(a) File an original and four (4) copies of the petition for appeal;
and (b) File five (5) copies of the state government agency’s final ruling, order, or determination.
(6) If an applicant fails to comply with subsection (e) or (d) of this section, notice of noncompliance shall be given by the board to the applicant.

Section 2: Representation in Proceedings—Before the Board.
(1) If a party is represented by an attorney in proceedings before the board, the attorney shall file an entry of appearance within thirty (30) days after the date on which the petition of appeal is filed. An applicant’s attorney shall not be required to file an entry of appearance if he files the petition on behalf of the applicant.
(2) Any attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3:020(2).
(3) An individual who is not an attorney shall not represent any other individual, corporation, trust, estate, or partnership.

Section 3: Discovery.
(1) A request to obtain discovery shall be filed with the board or hearing officer.
(2) The request shall:
(a) Specify the type of discovery requested;
(b) Where applicable, describe in sufficient detail:
1. Names and addresses of persons or items;
2. Description of documents or things;
(c) State the reason discovery is requested;
(3) The board or hearing officer may deny, limit, or require discovery.
(4) Discovery may be obtained by:
(a) Written or oral depositions;
(b) Interrogatories;
(c) Production or inspection of documents or things;
(d) Permission to photograph, or enter upon land or other property, or
(e) Physical or mental examination.
(6) Sanctions: If a party fails to obey an order to provide or permit discovery, the hearing officer may order that:
(a) Matters the complying party was seeking to prove through discovery shall be taken as established for the purposes of the hearing; and
(b) Noncomplying party shall be prohibited from introducing related matters at the hearing.

Section 4: Briefs.
(1) A party shall file with the board or hearing officer when permitted:
(a) An original and three (3) copies of a brief; and
(b) Attach to each brief a copy of any cited authority from a state other than Kentucky.

(2) A party shall file with the brief:
(a) Proposed findings of fact, conclusions of law; and
(b) The final order if the appeal is heard by the board, or recommended order, if the appeal is heard by the hearing officer.
(3) A brief shall be typewritten or printed. A photocopy will be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point font.

Section 5: Motion, Responsive Pleasmdls, and Time Computation.
(1) Except as provided in Section 1 of this administrative regulation, a party shall file an original and three (3) copies of a pleading or motion with the board. A pleading or motion, except the original petition of appeal, shall be accompanied by a certification that a copy has been served on each interested party.
(2) A party shall file an original and three (3) copies of a motion within ten (10) days from the date on which the motion is served.
(3) A movant shall file an original and three (3) copies of a reply to a party’s response to his motion within ten (10) days from the date on which the response is served.

KRS 446 030 shall apply to computation of time.

BILL BEAM, Jr., Executive Director
CHRISTOPHER LILLY, Commissioner
TERESA J. HILL, Secretary
APPROVED BY AGENCY:
FILED WITH LRC: December 15, 2006 at 9 a.m.
CONTACT PERSON: Bill Beam, Jr., Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, phone (502) 573-4316.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bill Beam, Jr., Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation amends the Board of Tax Appeals’ administrative regulation governing hearing procedures before the board.
(b) The necessity of this administrative regulation: This administrative regulation will streamline and clarify the manner in which hearings are conducted before the board.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.340(1) confers upon the board of Tax Appeals exclusive jurisdiction to hear and determine appeals from tax rulings of state and local government bodies. The statute mandates that hearings are to be conducted in accordance with KRS Chapter 13B. KRS 13A.170 authorizes government agencies to promulgate regulations supplementing the hearing procedures outlined in KRS Chapter 13B. This administrative regulation is being amended to more effectively supplement KRS Chapter 13B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation makes the hearing procedures clearer and more efficient.
(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 alters and adds to the current regulation governing hearing procedures before the board of Tax Appeals. The amended regulation: Requires 5 copies of pleadings and motions to be filed instead of 3 or 5, depending on the source of the appeal; grants the board the authority to dismiss an appeal if the petition filed is not in compliance with the format provisions for petitioners; specifies that individuals can represent themselves or be represented by counsel, but that other legal entities (corporations, partnerships, etc.) must be represented by counsel; keys discovery to the Kentucky Rules of Civil Procedure and makes discovery self-activating. Grants the board the authority to issue subpoenas upon a request of a party. Sets forth more detailed provisions concerning the contents and format of prehearing filings and briefs and a requirement that prehearing filings be filed at least 30 days in advance of a hearing; Requires that briefs be accompanied by copies of any legal authorities or supporting documents relied upon in the motion; and grants the board or hearing officer the power to summarily dispose of legal issues without a hearing in cases in which the material facts are undisputed by the parties.
(b) The necessity of the amendment to this administrative regulation: The amendment is intended to clarify and streamline the existing administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.340(1) confers upon the Board of Tax Appeals exclusive jurisdiction to hear and determine appeals from tax rulings of state and local government bodies. The statute mandates that hearings are to be conducted in accordance with KRS Chapter 13B. KRS 13A.170 authorizes government agencies to promulgate regulations supplementing the hearing procedures outlined in KRS Chapter 13B. This administrative regulation is being amended to more effectively supplement KRS Chapter 13B.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will make hearing procedures before the Board of Tax Appeals more efficient, particularly by permitting the board to summarily dispose of cases in which there are no contested factual issues.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administrative regulation: The administrative regulation affects any taxing Individual or legal entity which appeals a tax ruling issued by state and local government authorities.

(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: Taxpayers and their counsel will be required to familiarize themselves with the new regulation and its various provisions concerning the conduct of hearings. However, the rules are not radically different from those in effect before, and are similar to those governing many government hearing processes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The hearing process before the board will become more efficient, especially since the board will be permitted to summarily dispose of cases in which there are no contested factual issues. This should allow cases before the board to move through the appeals process more quickly.

(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: There is no additional cost involved.

(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 established any fees or directly or indirectly increased any fees: No fees will be established or increased by this amendment to the administrative regulation.

(9) TIERING: Is tiering applied? The amendment specifies that while legal entities must be represented by counsel, individual taxpayers may represent themselves if they so desire. This allows individuals to appeal their case to the board without having to pay for legal counsel. This arrangement works well in cases which are not overly complex.

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 Tax Appeals.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 138.170 authorizes an agency to promulgate administrative regulations which supplement the provisions of KRS Chapter 138.

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 (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amended After Comments)

906 KAR 1:150. Uniform evaluation and reevaluation of a health care professional.

RELATES TO: KRS 304.17A-545, 806 KAR 17:480, sec. 2
STATUTORY AUTHORITY: KRS 216B.040(3)(a), 216B.042(1)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is authorized to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the requirements for uniform credentialing of a health care professional who provides services in a health care facility or service and is implemented pursuant to KRS 304.17A-545(5).

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Credentialing" means a process to be completed before a health care professional is granted privileges at a health facility or health service.

(3) "Evaluation" means:

(a) A process for collecting and verifying the professional qualifications of a health care professional;

(b) An assessment of whether a health care professional meets specified criteria for professional competence and conduct.

(4) "Health care professional" means a:

(a) Physician or osteopath who is required to be licensed by KRS 311.560;

(b) Podiatrist who is required to be licensed by KRS 311.400;

(c) Chiropractor who is required to be licensed by KRS 312.018;

(d) Dentist who is required to be licensed by KRS 313.020;

(e) Optometrist who is required to be licensed by KRS 320.220;

(f) Physician assistant who is required to be licensed by KRS 311.844;

(g) Advanced registered nurse practitioner who is required to be licensed by KRS 314.042;

(h) Nurse who is required to be licensed by KRS 314.041;

(i) Respiratory care practitioner who is required to be licensed by KRS 314A.110;

(j) Psychologist who is required to be licensed by KRS 319.005;

(k) Occupational therapist who is required to be licensed by KRS 319A.090;

(l) Physical therapist who is required to be licensed by KRS 327.025;

(m) Speech language pathologist and audiologist who are required to be licensed by KRS 334A.030;

(n) Social worker who is required to be licensed by KRS 335.030;

(o) Professional counselor who is required to be licensed by KRS 335.505; or

(p) Other individuals who are not licensed under the Kentucky Revised Statutes who provide health care services under the direction and supervision of a licensed practitioner.

(5) "Health care provider" means a health facility or health service required to be licensed pursuant to KRS 216B.105.

(6) "Health facility" is defined by KRS 216B.015(12).

(7) "Health service" is defined by KRS 216B.015(13).

(8) "KAPER-1, Part B" means a part of the uniform application for provider credentialing and recredentialing that implements the
requirements of KRS 304.17A-545(5).

(9) "Reevaluation" or "recredentialing" means a process for identifying a change that may have occurred in a health care professional's qualifications since the last evaluation or credentialing.

Section 2. Health Care Provider Credentialing Requirement.
(1) A health care provider that is required under KRS 304.17A-545(5) to perform credentialing or recredentialing activities of a health care professional on or after July 1, 2007 [November 1, 2006] shall use Form KAPER-1, Part B, for evaluation of the credentials of health care professionals for whom the health care provider requires credentialing.

(2) Pursuant to subsection (1) of this section, a health care provider shall:
(a) Have a mechanism for making available and accepting from a health care professional a handwritten or electronically submitted Form KAPER-1, Part B, for:
   1. Initial credentialing; or
   2. Recredentialing;
(b) Within ninety (90) days of receipt of a complete Form KAPER-1, Part B:
   1. Notify the health care professional that the Form KAPER-1, Part B, is complete or that omitted or questionable information is included on the form; and
   2. Offer assistance to the health care professional, if applicable; and
(c) Within 180 days of receipt of a complete Form KAPER-1, Part B, provide a final determination and notification electronically or in writing to a health care professional of the status of his credentialing. This time period may be extended if, due to extenuating circumstances:
   1. Additional time is required by the health care provider to consider information submitted on the Form KAPER-1, Part B; and
   2. The health care professional is informed of the need for additional time and reason for the delay.
(3) A health care provider that performs credentialing activities shall not require the health care professional to provide information on Form KAPER-1, Part B, which is not relevant to the professional competence, conduct, character, scope of practice, health care setting, or service of a health care provider.
(4) The health care provider shall not be prohibited from obtaining from a health care professional supplementary credentialing materials, an original signature, or accepting an electronic signature of the Form KAPER-1, Part B.

ROBERT J. BENVENUTI, III, Esq., Inspector General MIKE TURNER, Undersecretary MARK D. BIRDWELL, Secretary APPROVED BY AGENCY: December 13, 2006 FILED WITH LRC: December 13, 2006 at 1 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Steven D. Davis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires use by licensed health care facilities and services of the uniform Form KAPER-1 when required by KRS 304.17A-545(5) to perform credentialing or recredentialing activities on health care professionals.
(b) The necessity of this administrative regulation: This administrative regulation assists with implementation of KRS 304.17A-545(5).
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation requires licensed health care providers to use the standard Form KAPER-1 when required to perform credentialing and recredentialing of health care professionals.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation requires licensed health care providers to use the standard Form KAPER-1 when required to perform credentialing and recredentialing of health care professionals. This will enhance efficiencies within the health care industry and among providers as mobility of professionals will be enhanced and professional qualifications may be verified through a uniform system.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will provide for the following changes: Replace an existing non-substantive review category with a new category and various corrections of technical errors within the regulation.
(b) The necessity of the amendment to this administrative regulation: To improve the efficiency and effectiveness of the current certificate of need process.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B 040 which requires the cabinet promulgate administrative regulations to establish the certificate of need review procedures.
(d) How the amendment will assist in the effective administration of the statutes: It will improve the efficiency and effectiveness of the current certificate of need process and improve access to affordable quality healthcare for the citizens of 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 affects all licensed health care facilities and services that are required to perform credentialing activities related to health care professionals. Initially, the regulation will affect credentialing activities in 131 free-standing hospital facilities.
(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 identified in question three will be required to use the form KAPER-1 when performing credentialing activities. The form was created and is available from the Kentucky Office of Insurance.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will cause a nominal increase in initial costs as facilities adopt and utilize KAPER-1.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialing costs will be reduced long-term as the KAPER-1 is portable from facility to facility.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: No additional costs.
   (b) On a continuing basis: No additional costs.
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds.
(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation if new, or by the change if it is an amendment: No fees will be increased and no additional funding will be sought to enforce this regulation.
(7) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering is not appropriate as this regulation affects equally all health care providers who are required by KRS 304.17A to conduct credentialing activities.

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 regulation im-
pacts the Cabinet for Health and Family Services and the Kentucky Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(3)(a), 216B.042(1), 304.17A-545, 806 KAR 17:480(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. This regulation will not affect expenditures and revenues of state or local government agencies.

(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 costs.

(d) How much will it cost to administer this program for subsequent years? No subsequent 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:
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Ademiah)

11 KAR 4:080. Student aid applications.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(4) authorizes the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.781. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5.130, the 2007-2008 [2006-2007] Free Application for Federal Student Aid (FAFSA);
(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6.010, the KHEAA Work-Study Program Student Application;
(3) For the Teacher Scholarship Program as set forth in 11 KAR 8.030, the Teacher Scholarship Application;
(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16.010.
(a) The 2007-2008 [2006-2007] Free Application for Federal Student Aid (FAFSA); and
(b) The Early Childhood Development Scholarship Application;
and
(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18.010:
(a) For high school students, the Robert C. Byrd Honors Scholarship Program Application; and
(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program Application for GED Recipients.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference.
(b) The "KHEAA Work-Study Program Student Application", July 2001;
(c) The "Teacher Scholarship Application", June 2006;
(d) The "Early Childhood Development Scholarship Application", April 2006;
(e) The "Robert C. Byrd Honors Scholarship Program Application", June, 2006; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or on the authority's Web site, www.KHEAA.com.

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 April 30, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renshier, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.
(b) The necessity of this administrative regulation: KHEAA is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-Study Program, Teachers Scholarship Program, College Access Program(CAP) and Kentucky Tuition Grant (KTG) Programs as well as the Robert C. Byrd Honors Scholarship Program pursuant to KRS 164.518(3), 164.744(6), 164.744(4), 164.753(3), (6), 164.7535, 164.769(5),(6)(f), 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-37, 1070d-38.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.
(d) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Same as (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Same as (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed new regulation would not affect any individuals as it merely changes the location wherein the grant, scholarship and work-study applications are located in the regulations.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The proposed new regulation merely centralizes the regulatory location of the student aid applications for programs administered by the Authority.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this administrative regulation.
(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding source is required in order to implement this administrative regulation since it merely incorporates in a central location the applications to be used for participation in student aid programs. The individual programs are each funded separately.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.746(5), 164.748(4), 164.753(3), (6), 164.755, 164.769(5), (6)(i), 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-37, 38.

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 administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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 will not generate any revenue.

b. How many 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 will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services (Amendment)

11 KAR 5:033. KTG student eligibility requirements.

RELATES TO: KRS 164.753(4), 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(4), 164.785

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

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

1. Be a resident of the Commonwealth of Kentucky;
2. Be enrolled as a full-time student in an eligible program of study;
3. Be enrolled at an educational institution and not have previously earned a first baccalaureate or professional degree;
4. Be determined by the authority, in accordance with 11 KAR 5.130 and 5.140, to have established financial need for the KTG;
5. Have remaining KHEAA grant limit;
6. Not receive financial assistance in excess of need to meet educational expenses;
7. Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
8. Satisfy all financial obligations to the authority and to any educational institution.

Ineligibility under this subsection may be waivered by request by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
9. Be a citizen of the United States or an eligible noncitizen;
10. Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus; and
11. Not be:
(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;
(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and
(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 April 30, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293,

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Renschler, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the
Kentucky Tuition Grant Program (KTG).

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors to students as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the Kentucky Tuition Grant Program (KTG).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive KTG grant 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: The proposed amendment would measure accumulative KTG grant eligibility in terms of percentages. It would also require KTG grant recipients to satisfy any financial obligations to any guarantee agency and to any educational institution in the United States before becoming eligible to receive a KTG grant.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the change in measuring accumulative KTG grant eligibility to percentages and to ensure no recipient becomes eligible for an award if they have a financial obligation to any guarantee agency or educational institution.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors to students as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend private educational institutions in Kentucky. As part of KHEAA's administration of the KTG program, KHEAA is changing part of the eligibility criteria as set forth in (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by changing certain eligibility requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student who are eligible to receive KTG grants at Kentucky's independent colleges and universities.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will require all student to satisfy financial obligations to any guarantee agency or educational institution before becoming eligible for an award.

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

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs, and administrative costs are borne by the Authority through receipt of the Authority.

(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 does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No, Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within the parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.785.

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. This administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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 will 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? No costs are associated with this regulation.

c. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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:

KENNESY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Anendment)

11 KAR 5:034. CAP grant student eligibility.

RELATED TO: KRS 164.744(2), 164.753(4), 164.7535
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors to students as provided in KRS 164.740 to 164.7881. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student assistance programs that meet certain eligibility requirements.
eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:
(1) Be a resident of Kentucky;
(2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;
(3) Demonstrate financial need in accordance with 11 KAR 5:130 through 11 KAR 5:145 for CAP grant assistance;
(4) Have remaining KHEAA grant limit;
(5) Not receive financial assistance in excess of need to meet educational expenses;
(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.7891 and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
(8) Be a citizen of the United States or an eligible noncitizen;
(9) Be receiving at least part-time credit at an educational institution in an eligible program of study and paying at least part-time tuition and fees to that institution, if the student is studying abroad or off-campus;
(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, as defined by the Council on Postsecondary Education in 13 KAR 2.090; and
(11) Not be:
(a) In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;
(b) Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and
(c) Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LHC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 14, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 April 30, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Renschler, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the College Access Program.
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.7553 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the College Access Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive CAP grant 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: The proposed amendment would measure accumulative CAP grant eligibility in terms of percentages. It would also require CAP grant recipients to satisfy any financial obligations to any guarantee agency and to any educational institution in the United States before becoming eligible to receive a CAP grant.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the change in measuring accumulative CAP grant eligibility to percentages and to ensure the recipient become eligible for an award if they have a financial obligation to any guarantee agency or educational institution.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants KRS 164.7553 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. As part of KHEAA's administration of the CAP grant program, KHEAA is changing part of the eligibility criteria as set forth in 2(a) above.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by changing certain eligibility requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students who are eligible to receive CAP grants at Kentucky’s public colleges and universities.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will require all student to satisfy financial obligations to any guarantee agency or educational institution before becoming eligible for an award.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost associated with this amendment.
(b) On a continuing basis: Same as 5(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs, and administrative costs are borne by the Authority through receipts of the Authority.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to the amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions regarding 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(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 of its effectiveness.

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 will 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 regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

5. Revenues (+/-):

6. Expenditures (+/-):

7. Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

(AMENDMENT)

'19 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.74(2), 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.74(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. Any application submitted pursuant to 11 KAR 4.080 and 11 KAR 5.130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

1. Expected Pell grant;
2. Expected family contribution; and
3. CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.

(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in section 4 of this administrative regulation except that KTG awards shall be offered only to the extent funds are available.

(4) A KTG award shall not exceed $3,000 [$2,900] for an academic year.

Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.

(2) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(3) A semester award shall not exceed tuition and fee charges for that semester.

(4) A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student.

(3) The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need by more than $300, the amount over $300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 6. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.

(2) If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.

(3) If both the fall and spring disbursements have been made,
the student shall repay the overaward to the authority.

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

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 April 30, 2007. 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7280, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renschler, Director

1. Provide a brief summary of:
   a. What this administrative regulation does: The administrative regulation establishes the award determination procedures for the Kentucky Tuition Grant (K TAG) Program.
   b. The necessity of this administrative regulation: This administrative regulation is necessary to establish the award determination procedures for the K TAG Program.
   c. How this administrative regulation conforms to the content of the authorizing statute: KRS 164.749(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation currently assists in the effective administration of the K TAG program by establishing the award determination procedures for the program.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   a. How the amendment will change the existing administrative regulation: The amendment will change the existing regulations by providing for an increase in the maximum award amount for a K TAG grant for the 2006-2007 academic year.
   b. The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the new award amount for the 2006-2007 academic year.
   c. How the amendment conforms to the content of the authorizing statute: KHEAA is required to promulgate administrative regulations pertaining to the awarding of grants pursuant to KRS 164.753(4). This administrative regulation establishes the award determination procedures for the Kentucky Tuition Grant (K TAG) Program.
   d. How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statutes by increasing the maximum award amount.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students who are eligible to receive K TAG at Kentucky's independent colleges and universities.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of the administrative regulation, if new, or by the change if it is an amendment: All students who are eligible to receive K TAG at Kentucky's independent colleges and universities will be positively impacted by the increased award amount.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   a. Initially: There will be no additional cost because the allocation of state lottery revenues is sufficient to offset the increase in award amount.
   b. On a continuing basis: Same answer as for (5a).

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for K TAG grants awarded to students is net lottery proceeds and General Fund appropriation.

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

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be established or increased in this administrative regulation.

9. TIERING: Is tiering applied. Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.749(4), 164.753(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. Although this administrative regulation will result in additional expenditures by the Authority, there will be no net increase in costs to the Authority because the allocation of state lottery revenues to fund the program is sufficient to offset the increase in award amount. This administrative regulation will not produce any revenue for the Authority during the first full year of its effectiveness.

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 will not generate any revenue.

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quently. No are no net costs to the Authority associated with this regulation as set forth in 4 above.

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

* Revenues (+): 
* Expenditures (+): 
* Other Explanation:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**

Division of Student and Administrative Services

(11 Amendment)

11 KAR 6:010. KHEAA Work-Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(5)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations governing work-study payments. This administrative regulation establishes the KHEAA Work-Study Program.

Section 1. Definitions. (1) "Administrative cost allowance" means a payment negotiated between the authority and a participating institution for annual costs directly related to the administration of the KWS program. It is equal to eight (8) percent of the gross wages earned, the amount requested by the institution, or $15,000 annually, whichever is least.

(2) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term in accordance with Section 2 of this administrative regulation.

(3) "Authority" is defined in KRS 164.740(1).

(4) "Career-related work experience" means a job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.

(5) "Cost of education" means those expenses commonly related to obtaining an education at the participating institution plus those costs directly related to the participating student's KWS program work experience, including required dues and travel (at the rate allowed for state employee travel reimbursement) from the school to the place of employment or, under an alternate work plan, from the student's residence to the place of employment.

(6) "Eligible institution" is defined in KRS 164.740(3).

(7) "Financial need" means the total cost of education less financial assistance received from all sources, other than KWS program employment, including grants, loans, and scholarships.

(8) "Full-time" means the number of credit hours determined by the participating institution to constitute full-time enrollment, which:

(a) Is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours; and

(b) Shall not include academic credit earned from KWS program employment.

(9) "KWS program employment" means the KHEAA work-study program.

(10) "Participating institution" is defined in KRS 164.740(13).

(11) "Prevailing wage rate" means a base rate of pay per hour for a KWS program student who is or would be performing equal job tasks as another employee, plus benefits paid to another employee having the same status as the KWS program employee.

(12) "Private employer" means an employer in the private sector, other than the institution that the participating student is attending.

(13) "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(14) "Wage reimbursement" means a payment:

(a) Made to a participating employer by a participating institution as reimbursement for wages paid to a participating student; and

(b) Specified in an agreement between the participating employer and the participating institution.

(15) "Work study" is defined in KRS 164.740(20).

Section 2. Alternate Work Plan. A participating student shall be considered a participant under an alternate work plan if the student:

(1) Attends school full time one (1) school term;

(2) Works full time the next school term, including a summer, for a participating employer;

(3) Is not enrolled at least half-time during the term of employment; and

(4) Returns to school full time the following school term.

Section 3. Institutional Eligibility. To participate in the KWS program, an educational institution shall:

(1) Be an eligible institution, located within Kentucky;

(2) Have formed an administrative agreement with the authority pursuant to 11 KAR 4:040;

(3) Submit a request for funding; and

(4) Execute a supplemental contractual arrangement with the authority and a participating employer.

Section 4. Funding Allocation Process. (1) Each year, the authority shall invite an eligible institution to submit a proposal for funding and shall provide instructions for submitting the proposal. The authority shall consider a proposal properly submitted by an eligible institution by the date specified in the invitation to participate. The authority shall award an administrative cost allowance, if the institution demonstrates need, to administer the KWS program for one (1) year. At least seventy-five (75) percent of wage reimbursement dollars shall be utilized with private employers.

(2) The authority shall consider the institution's request for funding and its past performance in the KWS program in the determination of approval for funding and the funding level. The authority shall evaluate the institution's level of participation in and administration of other programs of student financial assistance funded or administered by the authority and the institution's ability to:

(a) Comply with this administrative regulation and contractual obligations under the KWS program;

(b) Administer the program cost-effectively with the greatest results for students, evidenced by previous years' program records;

(c) Utilize the wage-reimbursement dollars allocated, evidenced by previous years' program records;

(d) Avoid using KWS dollars to supplant existing work-related programs for students; and

(e) Adequately monitor program activities, including eligibility determination of students and employers, continued eligibility of students and employers, and actual job activities as they relate to students' career-related work experience.

(3)(a) At least ninety (90) percent of the available funds that do not exceed the appropriation for the preceding fiscal year shall be awarded to eligible institutions that participated and expended all or a major portion of their wage reimbursement allotment during the prior year.

(b) If available funds do not exceed the appropriation for the preceding fiscal year, the authority shall not award more than ten (10) percent of available funds to eligible institutions that did not participate or had minimal participation in the KWS program during the preceding fiscal year.

(c) Allocation by the authority of available funds that exceed the appropriation for the preceding fiscal year shall not be constrained by the level of participation by an eligible institution during the prior year.

(d) If available funds are not sufficient to award each institution the amount requested, the authority shall allocate funds to some or all of the eligible institutions that submit requests for funding, taking into consideration the institution's past performance and level of funding under the KWS program, and the institution's level of participation and demonstrated capability to administer other programs of student financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWS program, an employer shall:

(1) Provide a bona fide career-related work experience for a participating student as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating institution;

(2) If the employer is not a participating institution, execute a

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KWSP employer agreement with each participating institution from which a participating student is hired; or

(b) If the employer is a participating institution, agree with the authority to be bound by the terms of a KWSP employer agreement;

(3) Provide a Kentucky work site for a participating student employed by the employer;

(4) Not be a business entity formed substantially for the purpose or intention of participating in the KWSP; and

(5) Not utilize a participating student in a work environment that is sectarian in nature or that involves political activity.

Section 6. Student Eligibility. To participate in the KWSP, a student shall:

(1) Be a citizen of the United States;

(2) Be a Kentucky resident, as determined by the participating institution in accordance with 13 KAR 2:045;

(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution, unless the student is participating in an alternate work plan;

(4) Demonstrate financial need;

(5) Be in good standing and making satisfactory academic progress toward completion of his educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for a postsecondary student or secondary school grade point average for an entering freshman);

(6) Not be participating in another work program administered by the participating institution;

(7) Submit a completed Work-study Program Student Application as set forth in 11 KAR 4:080, Section (2), to the participating institution, properly completed in accordance with the instructions, and be approved for participation by the participating institution;

(8) Not be in default on a financial obligation to the authority under a program administered by the authority pursuant to KRS 164.740 through 164.7691, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause, and

(9) Execute an employment agreement required by the participating institution.

(10) Not be

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

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

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

Section 7. Employer Responsibilities. To receive wage reimbursement, a participating employer shall:

(1) Immediately notify the participating institution in writing if a participating student’s employment is terminated, stating the reason for and effective date of termination;

(2) Report promptly to the participating institution a significant change of the position analysis or the student’s work assignment;

(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to a participating student;

(4) Pay a participating student the prevailing wage rate, which shall not be less than the federal minimum wage;

(5) Comply with all federal and state employment, safety and civil rights laws applicable to the position filled;

(6) Not, without prior consent of the participating institution, permit or require a participating student to work in excess of:

(a) Thirty (30) hours per week for a student currently enrolled less than full time;

(b) Twenty (20) hours per week for a student currently enrolled full time; and

(c) Forty (40) hours per week for a student employed under an alternate work plan;

(7) Permit on-site inspection and review of records by a representative of the participating institution and the authority during normal business hours; and

(8) Ensure that a regular employee is not displaced by a KWSP participating student.

Section 8. Student Responsibilities. A participating student shall:

(1) Participate in all screening or placement activities required by the participating institution;

(2) Maintain eligibility pursuant to Section 6 of this administrative regulation, and immediately notify the participating institution in writing of a change that affects the student’s continued eligibility;

(3) Be available for a job interview if requested by a participating employer; and

(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 9. (1) An appeal regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals.

(2) An appeal regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4.020.

SPENCER NOE, Chair

APPROVED BY AGENCY: February 22, 2007

FILED WITH LRC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 April 30, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renschler, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the KHEAA Work-Study Program as authorized by KRS 164.748(4) and 164.753(6).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the procedures to be followed by the authority in administering the KHEAA Work-Study Program as well as criteria and guidelines for participation in the program by post-secondary institutions, private employers and students.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations governing the KHEAA work-study 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 the statutes by establishing procedures to be followed in administering the KHEAA Work-Study Program as well as establishing criteria and guidelines for participation in the KHEAA Work-Study Program by post-secondary institutions, private employers and students.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. The amendment will provide the reference to the KHEAA Work-Study Program application in the administrative regulation and will instead reference its new location in 11 KAR 4:080 Section 1(2), a new central regulation.
(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary in order to provide a centralized location for all student aid applications including the Work-Study Program.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by relocating the date-specific Work-Study Program Application to a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by eliminating the need for amendment to this administrative regulation as well as other regulations with date-specific application references. Instead, only the new central regulation will require annual amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment would not affect any individuals as it merely changes the location wherein the Work-Study Application is located in the regulations.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment merely changes the referencing location of the Work-Study Program Application.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: See 5(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding appropriated for the KHEAA Work-Study Program is agency funds (revenues) which are used for direct program benefits. KHEAA’s cost for administering this program are included in the agency’s general administration appropriation, also funded by agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary. No increase in fees or funding will be necessary to amend this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.
3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 164.748(4), 164.753(6).
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 administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.
   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 will 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 regulation will not generate any revenue.
   c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.
   d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

**Kentucky Higher Education Assistance Authority**
Division of Student and Administrative Services

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment merely changes the referencing location of the Work-Study Program Application.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: See 5(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding appropriated for the KHEAA Work-Study Program is agency funds (revenues) which are used for direct program benefits. KHEAA’s cost for administering this program are included in the agency’s general administration appropriation, also funded by agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary. No increase in fees or funding will be necessary to amend this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**RELATES TO:** KRS 164.518
**STATUTORY AUTHORITY:** KRS 164.518(3), 164.748(4)
**NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.**

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:
(a) Be:
   1. A citizen, national, or permanent resident of the United States;
   2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment:
      3.a. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:
          a. Employed at least twenty (20) hours per week in a participating early childhood facility;
          b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or
          c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;
      3.b. As except provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;
      3.c. Be enrolled in at least one academic course toward a certificate or degree in early childhood development
4.a. As except provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;
5. Pursuing an ECDA-approved early childhood development
credential;
6. Ineligible to receive professional development funds from another education program; and
7. Maintaining satisfactory academic progress as determined by the participating institution; and
(c) Not be:
1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1089, unless eligibility has been reinstated;
2. LIABLE for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1089;
3. LIABLE for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1089.
(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:
(a) Meet the eligibility requirements of subsection (1) of this section; and
(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.
(3) Appeal of determination. The student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.
(a) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.
(b) If a student appeals a scholarship denial, the ECDA shall ensure that:
1. A hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved, and
2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.
(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:
(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;
(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood development credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or
(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid for in part by a scholarship.

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(2) The applicant shall:
(a) Print the employer verification page from the completed application;
(b) Have this page certified by an authorized representative of the participating early childhood facility; and
(c) Submit the certified page to the professional development counselor on or before:
1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.
(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a). This application may be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.
(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:
(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.
(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.
(3) The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA no later than:
(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.
(4) The employer signature page shall be received by the ECDA no later than August 1, December 1, and May 1 of the appropriate semester.
(5) ECDA shall certify the eligibility determination of approved applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:
(a) The amount of tuition charged for enrollment in nine (9) credit hours; and
(b) The award maximum.
(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an academic year shall be $1,600.

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LRC: March 18, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40622-0798, phone (502) 696-7290, fax (502) 696-7291.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renschler, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the applicant selection process for the Early Childhood Development Scholarship Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Early Childhood Development Scholarship Program by establishing the applicant selection process for the program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by requiring that the eligibility and satisfactory academic progress terms be extended.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain satisfactory academic progress in any current course work in order to be eligible for an Early Childhood Development Scholarship and continue to maintain satisfactory academic progress while receiving Early Childhood Development Scholarships. The amendment also extends the deadlines for the application process for requesting Early Childhood Development Scholarships for summer academic terms.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the Early Childhood Development Scholarship Program by requiring eligible applicants to maintain satisfactory academic progress and by extending the application deadlines for scholarships requested for summer academic terms.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 32 postsecondary institutions eligible for attendance by recipients of Early Childhood Development Scholarships. During the current academic year (July 1, 2000 to June 30, 2001), there are 344 students who have received scholarships under the Early Childhood Development Scholarship Program.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To be eligible for an Early Childhood Development Scholarship, applicants must meet the additional requirement of maintaining satisfactory academic progress, as determined by the participating institution. The applicant shall also ensure that the completed application is certified by an authorized representative of the participating early childhood facility and received by the professional development counselor on or before April 15 preceding the summer academic term for which the scholarship is requested. The professional development counselor shall ensure that the applications of those people recommended to receive a scholarship are received by the ECDRC on or before May 1 preceding the summer academic term for which the scholarship is requested.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is estimated that there will be no additional administrative costs to the authority in implementing the amendments to this administrative regulation.
(b) On a continuing basis: Same as (5)(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided by appropriations from the Tobacco Settlement Fund. The authority does retain some of the funds for the costs associated in administering the Early Childhood Development Scholarship Program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.
(8) TIERING: Is tiering applied? Tiering was not applied to this amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164,748(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 of the administrative regulation is to be in effect. This administrative regulation will result in no additional expenditures or revenues to the Authority during the first full year of its effectiveness.

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 will 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 regulation will not generate any revenue.
c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.
d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.
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:
STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015, 117.025(3)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.025(3)(h) requires the State Board of Elections to provide [a] voter registration lists [list] of currently registered voters to specific entities and persons. The statute also prohibits the State Board of Elections from releasing a voter registration list to a person who intends to use the list for commercial use. This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing the granting or denial of a request for a voter registration list which may involve a commercial use.

Section 1. Definitions. (1) "Advertismment" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical lists" means lists of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "CD-ROM" means a compact computer disc with read-only memory containing the voter’s name and address, county code, precinct code, gender, party, zip code, date of birth, date of registration, and five (5) year voting history.

(5) "Household labels by street order" means labels that are sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Street order lists" means lists of registered voters sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

Section 2. Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct roster.

Section 3. Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct roster.

Section 4. Each voter shall, when he or she signs the precinct roster, correct any error existing in his or her address as it appears upon the precinct roster.

Section 5. Each county clerk shall take whatever steps are necessary to correct and update each voter’s address upon the statewide voter registration database.

Section 6. Interpretation of Commercial Use. (1) Commercial use, as that term is used in KRS 117.025 (3)(h), shall be interpreted by the Board of Elections to mean [be]:

(a) The use by the requester of the voter registration list, or any part of the list, in any form, for sale or advertisement of any good or service;

(b) The transfer of the list by the requester for a profit to any other person whom the requester knew or should have known intended to use the voter registration list, or part of that list, for the sale or advertisement of a good or service.

(2) Sale of a voter registration list shall be deemed to include any sale, rental, distribution, offer for sale, rental or distribution, or attempt directly or indirectly to sell, rent or distribute the list.

(3) Advertisement means any attempt by publication, dissemination, solicitation, or circulation to induce, directly or indirectly, any person to enter into any obligation, or acquire any title or interest in any good or service.

(4) Request for a copy of the voter registration list shall be granted by the Board of Elections for the following purposes:

(a) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes; or

(b) Publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts.

Section 7. Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed form SBE-84(02/04) to the State Board of Elections with payment of costs as follows:

(1) The minimum charge for lists and label orders shall be ten (10) dollars.

(2) The charge for alphabetical lists shall be four (4) dollars per precinct.

(3) The charge for street order lists shall be four (4) dollars per precinct.

(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.

(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.

(6) The charge for household labels by zip code order shall be ten (10) dollars per thousand labels.

(7) The minimum charge for CD-ROM shall be twenty-five (25) dollars.

(8) The charge for CD-ROM shall be one (1) dollar per 1,000 records up to 100,000 records; fifty (50) cents per thousand records over 100,000 records; $450 statewide.

Section 8. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE-84 (February, 2007, edition06/04) is incorporated by reference.

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

TREY GRAYSON, Chair
APPROVED BY AGENCY: February 20, 2007
FILED WITH LRC: March 8, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601; phone (502) 573-7100; fax (502) 573-4369.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures that county clerks, precinct election officers and voters are to follow in order to ensure the accuracy of data contained in the statewide voter registration database. In addition, the regulation establishes the procedures for duly qualified candidates, political party committees or officials thereof or any committees that advocates or opposes an amendment or public question, or other persons at the board's discretion, to request voter registration data, pursuant to KRS 117.025(3)(h).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that county clerks, precinct election officers, voters, and those interested in obtaining a copy of the voter registration data are aware of their rights and duties. In addition, the regulation is necessary to establish the form for duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, to request voter registration data, pursuant to KRS 117.025(3)(h).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections. KRS 117.025(3)(h) prohibits releasing the voter registration data to anyone who intends to use it for a commercial use. The administrative regulation defines commercial use and creates the standards by which the State Board of Elections may review requests for voter registration data.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the term commercial use and describes the procedures to be followed by county clerks, precinct officers, and others in requesting and receiving voter registration data. This administrative regulation assists in the effective administration of the statute by creating a process by which duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, can request voter registration data, pursuant to KRS 117.025(3)(h).
(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:
(a) How the amendment will change this existing administrative regulation: This amendment provides an update to the latest edition of the "Request for Voter Registration Data" form, SBE 84, used by duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, to request voter registration data, pursuant to KRS 117.025(3)(h).
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the latest edition of the form incorporated by reference that carry out these procedures established by this regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the latest edition of the form incorporated by reference that carry out these procedures established by this regulation in accordance with KRS 117.025(3)(h).
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, to request voter registration data with the most recent version of SBE 84 to assist in the process established by this administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, who require the use of voter registration data.
(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 in order to comply with this administrative regulation or amendment: All duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, who require the use of voter registration data, will have to obtain a copy of our new form either on the State Board of Elections' website or by contacting the State Board of Elections or the county clerks directly.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The costs for the program are already integrated into the original version of this administrative regulation. This amendment does not increase the costs for the program.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All duly qualified candidates, political party committees or officials thereof or any committee that advocates or opposes an amendment or public question, or other persons at the board's discretion, who require the use of voter registration data will have the benefit of using a form that has improved clarity and is in compliance with KRS 117.025(3)(h) and this administrative regulation.
(5) Provide an estimate of how much it will cost the administrative agency to implement this administrative regulation:
(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.
(b) On a continuing basis: Ordinary printing costs already anticipated in budget.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any fees beyond those already established in the original administrative regulation.
(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

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 State Board of Elections and county election officials and any entity requiring voter registration data.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.025(3)(h).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of the 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 has generated on average up to $100,000 during election years since its inception. However, during non-election years, the administrative regulation generates only a fraction of these revenues. The State Board of Elections does not anticipate that this amendment will increase the revenues significantly.
(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 has generated on average up to $100,000 during election years since its inception. However, during non-election years this administrative regulation generates only a fraction of these revenues. The State Board of Elections does not anticipate that this amendment will increase the revenues significantly.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and are already allocated in the State Board of Elections' operating budget.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A

Other Explanation: This administrative regulation has generated on average up to $100,000 during election years since its inception. However, during non-election years this administrative regulation generates only a fraction of these revenues. The State Board of Elections does not anticipate that this amendment will increase the revenues significantly.

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:100. Evaluation of precinct election officers.

RELATES TO: KRS 117.045
STATUTORY AUTHORITY: KRS 117.045(1)
NECESSITY, FUNCTION, AND CONFORMITY: County boards of elections appoint precinct election officers. This administrative regulation is necessary to assist county boards of elections in determining if a person nominated to serve as a precinct election officer is qualified to serve in that capacity.

Section 1. In evaluating if a person nominated to serve as a precinct election officer is qualified to serve in that capacity, a county board of elections may use the following evaluation procedures:

1. Determine if the person submitted a signed statement in accordance with KRS 117.045(2);
2. Determine if the person meets the qualifications set forth in KRS 117.045(8); and
3. Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

Section 2. A county board of elections shall refuse to appoint a person nominated to serve as a precinct election officer if it determines that the person is not qualified based on the evaluation procedures set forth in Section 1 of this administrative regulation.


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

TREY GRAYSON, Chair
APPROVED BY AGENCY: February 29, 2007
FILED WITH LRC: March 6, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify the agency in writing by April 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601; phone: (502) 573-7100; fax: (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person Kathryn H. Dunnigan
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation implements the requirements of KRS 117.045(1) that requires the State Board of Elections to promulgate an administrative regulation to establish evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct election officers.
(b) The necessity of this administrative regulation: This regulation is necessary to carry out the mandate of KRS 117.045(1).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a procedure by which the county boards of elections must follow when evaluating and removing precinct election officers who do not fulfill the qualifications for being a precinct election officer.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of KRS 117.045(1) that requires the county boards of elections must follow when evaluating and removing precinct election officers who do not fulfill the qualifications for being a precinct election officer.
(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:
(a) How the amendment will change this existing administrative regulation: This amendment provides the form, required by KRS 117.045(2) of the list that the county executive committees of the two (2) political parties having representation on the State Board of Elections may designate in writing to the county board of elections a list of not less than four (4) names for each precinct of persons possessing the qualifications of an election officer. This form also provides the statement, pursuant to KRS 117.045(2), by which each person listed on the form may use to state that he or she is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense or any felony, unless the person's civil rights have been restored by the Governor.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to fulfill the mandates of KRS 117.045(2).
(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the form, required by KRS 117.045(2) of the list that the county executive committees of the two (2) political parties having representation on the State Board of Elections may designate in writing to the county board of elections a list of not less than four (4) names for each precinct of persons possessing the qualifications of an election officer. This form also provides the statement, pursuant to KRS 117.045(2), by which each person listed on the form may use to state that he or she is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense or any felony, unless the person's civil rights have been restored by the Governor.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the county political party executive committees a form by which to provide their lists of qualified individuals to serve as precinct election officers before every election to the county board of elections.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All county election officials, county political party executive committees, and precinct election officers.

(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 county election officials will have to provide a copy of SBE 22 to each political party executive committee in the county. The political party executive committees will have to complete the forms and have each individual sign the oath required on the form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The costs for the program only include the printing of the forms and are minimal and already included in the existing budget of the State Board of Elections.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The county election officials, county political party executive committees, and precinct election officers will have a convenient form by which to carry out the mandates of KRS 117.045(2).

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

(a) Initially. Ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

What is the source of funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

**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 county election officials, county political party executive committees, and precinct election officers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 117.025(1) and (2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of the 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 costs associated with this administrative regulation are minimal and will only be incurred by the State Board of Elections.

(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 revenues 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 any revenues for state or local governments.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation are minimal and will only be incurred by the State Board of Elections.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation are minimal and will only be incurred by the State Board of Elections.

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

**GENERAL GOVERNMENT CABINET**

Kentucky Board of Veterinary Examiners

(Amendment)

201 KAR 16:010. Code of ethical conduct.

RELATES TO: KRS 321.351(1)(h)
STATUTORY AUTHORITY: KRS 321.235
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.351
provides for the suspension or revocation of a certificate of license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain acts or inaction which shall constitute a code of ethical conduct for each licensed practitioner.

Section 1. A veterinarian shall take sufficient time and conduct the appropriate tests necessary to diagnose the condition of the patient which he is treating.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall maintain adequate equipment to treat patients that he is called upon to treat in the practice of veterinary medicine.

Section 4. A veterinarian shall maintain his service premises and all equipment in a clean and sanitary condition.

Section 5. A veterinarian shall not issue a certificate of health unless he has personal knowledge through actual examination and appropriate testing of the animal that the animal meets the requirements for the issuance of the certificate.

Section 6. A veterinarian shall not aid or abet the unlawful practice of veterinary medicine.

Section 7. (1) A veterinarian shall not sell, or offer for sale, prescription medicine or drugs at any place other than:

(a) His office, clinic, or hospital; or

(b) Other place where he is treating patients.

(2) The prescription drugs or medicines sold, or offered for sale, shall be used in the treatment of the patient the veterinarian is treating.

(3) A veterinarian may fill the prescription of another licensed veterinarian who has established a bona fide veterinarian-client-patient relationship in a case.

Section 8. A veterinarian shall not engage in false, misleading, or deceptive advertising.

Section 9. A veterinarian shall not write testimonials as to the virtue of drugs, medicines, remedies, or foods except to report the results of properly controlled experiments or clinical studies to interested veterinary organizations and associations.

Section 10. A veterinarian shall keep adequate and sufficient

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records of the examination and treatment of all patients for a period of five (5) years after the last examination of the patient.

Section 11. A veterinarian shall not represent to the public that he is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has
(1) Been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners; and
(2) Furnished proof of certification to the board.

Section 12. (1) A veterinarian shall not overutilize his practice.
(2) A practice shall be deemed overutilized if it is excessive in quality or amount relevant to the needs of the patient.
(3) Whether a practice is overutilized shall be determined by considering:
   (a) The patient's history and subjective symptoms;
   (b) Objective findings;
   (c) Reasonable clinical judgment; and
   (d) Other information relevant to the practice of veterinary medicine.

Section 13. A veterinarian shall promptly notify the board of:
(1) Disciplinary action taken against him; or
(2) The voluntary surrender of his license to practice veterinary medicine in another jurisdiction; and
(3) the conviction, in any jurisdiction, of a:
   (a) Misdemeanor, or
   (b) Felony

Section 14. A veterinarian's practice shall conform to the currently accepted standards in the profession of veterinary medicine.

Section 15. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the:
(1) Procurement of a license to practice veterinary medicine; or
(2) The practice of veterinary medicine.

Section 16. A veterinarian shall not practice veterinary medicine:
(1) So as to endanger the health and welfare of his patients or the public; or
(2) If his ability to practice with reasonable skill and safety is adversely affected by reason of excessive use of:
   (a) Alcohol;
   (b) Drugs;
   (c) Narcotics;
   (d) Chemicals; or
   (e) Other substances.

Section 17. A veterinarian shall conduct professional activities in conformity with all federal, state, and municipal laws, ordinances or regulations.

Section 18. A veterinarian shall comply with a request by the board to appear before the board or to provide information to the board.

Section 19. A veterinarian shall comply with restrictions on his practice of veterinary medicine imposed by the board with the licensee's consent or after notice and hearing.

Section 20. A veterinarian shall notify the board of the suspension, revocation, or voluntary surrender of his Federal Drug Enforcement Administration registration or his state controlled substances license.

Section 21. (1) A veterinarian shall not abuse or take advantage of the confidence reposed in him by his client.
(2) A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his client have differing interests if the:
   (a) Client reasonably expects the veterinarian to exercise his professional judgment for the protection of the client;
   (b) Veterinarian has not fully disclosed his interest; and
   (c) Client has not consented after full disclosure.
(3) Acceptance of a fee from both the buyer and the seller in a transaction shall constitute prima facie evidence of a conflict of interest.
(4) Acceptance of a fee from a buyer and a seller in an inspection of an animal for soundness shall constitute a conflict of interest.

Section 22. A veterinarian shall not prescribe, dispense or administer controlled substances except in the course of his professional practice and when a bona fide veterinarian-client-patient relationship has been established.

Section 23. A veterinarian shall maintain a confidential relationship with his clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 24. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

Section 25. A veterinarian shall not physically abuse or engage in unnecessary rough handling of a patient under his care.

Section 26. A veterinarian shall not permit a veterinary technologist, technician, or assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 27. A veterinarian shall not refuse treatment of a patient on the basis of the client's race, color, sex, religion, national origin, or disability.

Section 28. (1) If treatment is initiated, it shall be completed unless terminated by the client.
(2) A veterinarian shall have the right to refuse to:
   (a) Admit as an inpatient to his hospital or clinic an animal that is not currently vaccinated; or
   (b) Render veterinary medical services for an owner who physically or verbally abuses the veterinarian or his employee.

Section 29. A veterinarian shall not neglect a patient under his care.

Section 30. A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner is away, except as otherwise provided by law.

Section 31. A veterinarian shall obtain the consent of the owner before disposing of any patient which dies while in the veterinarian's care, provided the consent is given within a reasonable time. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 32. A veterinarian shall obtain the consent of the patient's owner or agent before administering general anesthesia or performing any surgical procedure, unless circumstances qualifying as an emergency do not permit obtaining the consent.

Section 33. A veterinarian shall post at his facility and make available over the telephone his policy regarding the hours, emergency coverage, and other similar provisions for the operation of his facility.

Section 34. A veterinarian shall ascertain, before hiring, whether a person who may be hired as a veterinarian has a valid, current Kentucky license to practice veterinary medicine and shall be responsible for ascertaining whether the license to practice veterinary medicine of any veterinarian employee is current.

Section 35. (1) A veterinarian shall attempt to obtain the consent of a patient's owner or agent in writing, if feasible, before:
   (a) Euthanizing a patient; or
   (b) Transporting a patient to another facility for veterinary
medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent.

(2) If it is not feasible to obtain consent in writing, the veterinarian shall obtain oral consent from the patient's owner or agent and document the consent in the medical record.

PERRY W. WORNALL, D.V.M., Chair
JOHN FARRIS, Secretary
APPROVED BY AGENCY: March 7, 2007
FILED WITH LRC: March 7, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007 at 10 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by (month, day, year) five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602. phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a code of ethical conduct for licensed veterinarians.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensees with explicit language regarding behavior that may result in disciplinary action consistent with KRS Chapter 321. This administrative regulation sets forth certain acts or inaction which shall constitute a code of ethical conduct for each licensed practitioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.240(6) authorizes the board to establish a regulation that sets forth certain acts or inaction which constitute a code of ethical conduct for each licensed practitioner.

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

(a) How the amendment will change this existing administrative regulation: This regulation establishes a new section whereby a veterinary nurse practitioner must obtain consent of a patient's owner or agent in writing, if feasible, prior to euthanizing a patient and, if not feasible to obtain consent in writing, to obtain oral consent from the patient's owner or agent and document the consent in the medical record.

(b) The necessity of the amendment to this administrative regulation: This amendment provides the licensee with a protocol if it becomes necessary to euthanize a patient.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 321.240(6) authorizes the board to establish a regulation that sets forth certain acts or inaction which constitute a code of ethical conduct for each licensed practitioner.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a protocol if it becomes necessary to euthanize a patient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2100 licensed veterinarians.

(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; Licensees will be required to comply with the guidelines if it becomes necessary to euthanize patients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide licensees with guidelines if it becomes necessary to euthanize patients.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by license holders and applicants.

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

(9) TIERING: Is tiring applied? No. Criteria apply equally to all licensed veterinarians.

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? Kentucky Board of Veterinary Examiners

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235

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? 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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners (Amendment)

201 KAR 16:060. Complaint processing procedures.

RELATES TO: KRS 321.235(2), 321.351, 321.360

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the board to investigate an allegation of a practice which violates the provisions of KRS Chapter 321. This administrative regulation establishes the procedures for processing a complaint received by the board.

Section 1. [Receipt of] Complaints. (1) Receipt of complaints.
(a) A complaint alleging misconduct which might constitute a violation of KRS Chapter 321 may be submitted by an individual, organization, or entity.
(b) A complaint shall be in writing and shall be signed by the person offering the complaint and notarized.
(c) The board may also file a complaint based on information in its possession.
(2) Upon receipt of a complaint, the board shall send a copy of the complaint to the licensed individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required within twenty (20) days from the date of receipt. Failure to respond in a timely fashion may constitute a violation of the code of ethical conduct pursuant to 201 KAR 16:010, Section 18.

Section 2. Initial Board Review. (1) After the receipt of a complaint and the time period for the individual's response has expired, the board shall consider the complaint, the licensed individual's response, and other relevant material available to the board to determine [The determination that the board makes at this point shall be] whether there is enough evidence to warrant an investigation.
(2) If, in the opinion of the board, a complaint does not warrant an investigation, the board shall notify both the complaining party and the licensed individual of the outcome of the complaint.
(3) If, in the opinion of the board, a complaint warrants an investigation, the board shall open an investigation into the matter.

Section 3. Results of Investigation. (1) Upon completion of the investigation, the board shall review the investigative report and shall determine whether there is enough evidence to believe that a violation of KRS Chapter 321 may have occurred.
(2) If the board dismisses the complaint, it shall notify both the complaining party and the licensed individual of the outcome of the complaint.
(3) If the board does not dismiss the complaint, it shall proceed in accordance with the provisions of KRS 321.360.

PERRY W. WORNALL, D.V.M., Chair
JOHN FARRIS, Secretary
APPROVED BY AGENCY: March 7, 2007
FILED WITH LRC: March 7, 2007 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007 at 10 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by (month, day, year) five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602. phone (502) 564-3266, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Claude Wagner, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures for processing complaints received by the board.
(b) The necessity of this administrative regulation: The necessity of this regulation is to give notice to licensees of the procedures that will be followed if a complaint is filed against them.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(2) gives the board the authority to investigate an allegation of a practice which violates the provisions of KRS Chapter 321. KRS 321.240 (5) gives the board the authority to promulgate administrative regulations for enforcing the provisions of the chapter.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the procedures for addressing a complaint filed against a licensee.
(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 require a written complaint filed with the board to be notarized.
(b) The necessity of the amendment to this administrative regulation: KRS 321.235(2), (3), 321.240 (5), 321.351, 321.360 authorize the board to promulgate administrative regulations establishing procedures for filing complaints with the board.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235(2) gives the board the authority to investigate an allegation of a practice which violates the provisions of KRS Chapter 321. KRS 321.240 (5) gives the board the authority to promulgate administrative regulations for enforcing the provisions of the chapter.
(d) How the amendment will assist in the effective administration of the statutes: This amendments will assist in the effective administration of the statutes by requiring that written complaints filed with the board be notarized.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual filing a complaint against a licensee.
(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: Individuals filing a written complaint against a licensee must have the written complaint notarized.
(5) 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 filing a complaint against a licensee will be required to have the document notarized.
(6) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.
(7) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board expects that a person who files a complaint will appreciate the importance of the document.
(8) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None
(a) Initially: None
(b) On a continuing basis: None
(9) TIERING: Is tiering applied? No. This administrative regulation applies to all licensees.
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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? Kentucky Board of Veterinary Examiners
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235(2), (3), 321.240(5), 321.351, 321.360.
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 (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 (+/-):
   Expenditures (+/-):
   Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d), 335.527(1)(a)
STATUTORY AUTHORITY: KRS 335.515(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) An applicant shall be deemed to have a degree in counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling".
(2) An applicant shall be deemed to have a degree in a related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(e) [which includes a three (3) semester-hour course in professional ethics and orientation in counseling].
(3) Degrees and graduate credit hours required under KRS 335.125(1)(d) shall be from a regionally-accredited institution.
(4) An institution shall be deemed to be a regionally-accredited institution if the institution of higher learning was accredited, when the degree was conferred, by a regional accrediting body recognized by the:
   (a) U.S. Department of Education;
   (b) Council on Postsecondary Accreditation; or
   (c) Council on Postsecondary Education.

Section 2(1) Except as provided by subsection (2) of this section, the practicum or internship required by KRS 335.525(1)(e) shall be completed within the organized sequence of study of the graduate degree of the applicant.
(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally-accredited university or college under the direction of a qualified graduate faculty member.

[Section 3. After January 1, 2008, in order to meet the requirements of KRS 335.525(1)(c) or 335.527(1)(c), each applicant shall have completed a minimum of graduate course work in each area as follows:
   (1) The helping relationship, including counseling theory and practice—six (6) semester hours, three (3) of which shall be in behavior management or behavior therapy;
   (2) Human growth and development—six (6) semester hours in human development, personality or learning theory;
   (3) Lifestyle and career development—three (3) semester hours in lifestyle and career counseling or vocational counseling;
   (4) Group dynamics, process, counseling, and consulting—three (3) semester hours in group development, group dynamics, and group counseling theory;
   (5) Assessment, appraisal, and testing of individuals—three (3) semester hours;
   (6) Social and cultural foundation, including multicultural issues—three (3) semester hours;
   (7) Principles of biology, diagnose, treatment planning, and prevention of mental and emotional disorders and dysfunctional behaviors—three (3) semester-hour courses in diagnosis and treatment planning which includes the appropriate use of the current edition of the "Diagnostic and Statistical Manual for Mental Disorders";
   (8) Research and evaluation—three (3) semester hours; and
   (9) Professional orientation and ethics—three (3) semester hours in the application of professional ethics and orientation in mental health counseling.]

TIMOTHY G. ROBERTSON, Chair

JOHN FARRIS, Secretary

APPROVED BY AGENCY: March 7, 2007
FILED WITH LRC: March 7, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007 at 1 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by (month, day, year) five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3256, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner, Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the educational requirements to qualify for licensure.
   (b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the educational requirements for licensure.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure
shall have sixty (60) graduate semester hours in specified areas.
KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation specifies the types of education that is acceptable for licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation specifies the internship requirements and the number of hours required in the areas identified in KRS 335.525(1)(d) and KRS 335.527(1)(e).
(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: The regulation specifies the requirements for obtaining the education necessary to qualify for licensure.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: The board licenses approximately 650 persons in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by this 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: This administrative regulation provides that applicants will have to fulfill specific educational requirements before obtaining licensure.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will be dependent on the various expenses dictated by the higher education institutions from which the education will be acquired.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board expects that a person applying for licensure will have acquired an education necessary to practice professional counseling in a competent manner to protect the public.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: No fee increase is 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 any fees or directly or indirectly increase any fees

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

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? Kentucky Board of Licensure for Professional Counselors.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3)
4. Estimate the effect of this administrative regulation on the expenditure 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? 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:

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

301 KAR 2:185. Hunter education [training].

RELATES TO: KRS 150.010, 150.015, 150.990
STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150, including the management and conservation of wildlife. This administrative regulation establishes the requirements for hunter education instruction, [certification as a hunter education trainer and course requirements] to promote safe hunting, responsible wildlife management and conservation of wildlife.

Section 1. Definitions. (1) "Adult" means a person who has reached [over] the age of eighteen (18).
(2) "Apprentice" means a volunteer who may assist a hunter education instructor who is age fourteen (14) and older because he has successfully completed a Kentucky hunter education course, is sponsored by a Kentucky hunter education instructor, and has successfully completed the Kentucky Hunter Education Instructor course.
(3) "Course completion card" means the card issued by the department, another state, province, country or to a student who has successfully completed a hunter education course which meets the standards established by the International Hunter Education Association.
(4) ([4][4]) "Department" is defined in KRS 150.010(8).
(5) ([5]) "Hunter education instructor" means a person [volunteer] who [has met the requirements established in Section 6 of this administrative regulation and who] has been certified by the department to instruct or assist in the instruction of the Kentucky Hunter Education Program.
(6) ([6]) "Hunter training officer" means an employee of the Commissioner or his designee who coordinates his assigned region of the hunter education program-by-recruiting, training, and evaluating the work of volunteer hunter education instructors, and assists in the development of the hunter education curriculum.
(7) "Hunter training officer-supervisor" means an employee of the Commissioner or his designee who coordinates the Kentucky Hunter Education Program statewide, including the supervision of the hunter training officers, in accordance with department's mission, the direction of the Commissioner or his designee, and the education standards of the International Hunter Education Association.
(8) "International Hunter Education Association" means the organization recognized as the international governing body for teaching hunter education, [professional association of sixty-three (63) state and provincial wildlife conservation agencies, and the]
Section 2. Mandatory Hunter Education Course Completion Card. (1) Except as provided in subsection (4) of this section, a hunter (resident and nonresident) born on or after January 1, 1975 shall carry a valid hunter education course completion card or other proof verifying that the hunter has completed a (the) hunter education course which meets the standards approved by the International Hunter Education Association. (2) A bow hunter not in possession of a firearm may carry a state, province or country issued Bow Hunter Education Certificate which meets the standards approved by the International Hunter Education Association in lieu of the hunter education course completion card. (3) A valid hunter education course completion card or a bow hunter education certification shall be presented to a state conservation (wildlife and boating) officer upon (his) request. (4) Exemptions. (a) Persons under twelve (12) years of age [Children]; 1. A person [Children] under twelve (12) [ten (10)] years of age may hunt without a course completion card, but shall be accompanied by an adult who meets the hunter education requirement and who shall be in a position to take immediate control of the [child's] bow or firearm; 2. One (1) adult who meets the hunter education requirement shall not accompany more than two persons [children] under the age of twelve (12) [ten (10)] at one (1) time. (b) A person exempt from a hunting license requirement is also exempt from possessing the course completion card. (c) A person required to carry a course completion card while hunting in Kentucky is eligible for a temporary hunter education requirement exemption. 1. A temporary hunter education exemption shall be valid for one (1) year from the date obtained. 2. A person shall not be eligible to obtain more than one (1) exemption. 3. To validate the exemption, a person shall: (a) Obtain a temporary hunter education exemption permit from the department for a fee; (b) Carry the exemption form while hunting; (c) Be accompanied by an adult who meets the hunter education requirement and who shall remain in position to take immediate control of the exempted hunter's bow or firearm while hunting. Section 3. [Hunter-Education-Instruction-(1) Hunter education training shall be provided by a: (a) Hunter-training officer supervisor; (b) Hunter-training officer; (c) Master-hunter-education-instructor;]
VOLUME 33, NUMBER 10 - APRIL 1, 2007

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:
(a) What the administrative regulation does:
(b) The necessity of the administrative regulation:
(c) How does this administrative regulation conform to the authorizing statute:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation:
(b) The necessity of the amendment to the authorizing statute:
(c) How does the amendment conform to the authorizing statute:


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For JONATHAN GASSETT, Commissioner

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held April 23, 2007, at 3 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 April 30, 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) 564-9136.
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 tested? No, the same hunter education requirements apply to all hunters in 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 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 authorizes the department to promulgate administrative regulations concerning the management and conservation of wildlife including establishing requirements for hunter education instruction.

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.

(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.

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

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

COMMERCE CABINET
Department of Fish and Wildlife Resources
(AMENDMENT)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers [and small-game].

RELATES TO: KRS 150.025(1), 150.340, 150.370(1), 150.399, 150 400, 150.410, 150.890

STATUTORY AUTHORITY: KRS 150 025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. This administrative regulation is necessary to insure the permanent and continued supply of [small-game-and] furbearer species by protecting them from overharvest.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.

(4) "Furbearers" mean mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels, river otter, bobcat, coyote and striped skunk.

(5) "Hunter" means a person hunting small-game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the season established by 301 KAR 2:172, the 10-day period established by 301 KAR 2:172 during which hunters may take deer with breech-loading firearms.

(7) "Nonlocking snare" means a trap consisting of a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Small-game" means squirrel, rabbit, quail or grouse.

(9) "Squirrel" means gray squirrel or fox squirrel.

(10) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Squirrel:
(a) The first Saturday in June for fourteen (14)-consecutive days;
(b) The third Saturday in August through the last day of February.
(c) The season shall be closed during the first weekend of the modern gun deer season.

(2) Rabbits and quail:
(a) Eastern Zone: from the first to second wildlife districts, as specified in 301 KAR 1:010, the season shall be the Monday following the opening of modern gun deer season until February 10.
(b) Eastern Zone: from the third to the ninth wildlife districts, as specified in 301 KAR 1:010, the season shall be November 1st until January 31. The season shall be closed during the first weekend of the modern gun deer season.

(3) Grouse: The Monday after the first weekend of modern gun deer season through the last day in February in Adair, Bath, Bell, Boyd, Breckinridge, Boyd, Breathitt, Campbell, Carter, Clark, Clay,Clinton, Cumberland, Elliott, Bell, Fleming, Floyd, Garrard, Greenup, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Leslie, Lincoln, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(4) Furbearers, hunting and trapping:
(a) [ اي ] Raccoon and opossum:
(b) Hunting - November 1 through noon the last day of February.

[a] During the modern gun deer season, a raccoon or opossum hunter shall not:
1. Take raccoons or opossums [(a) Hunt] during daylight hours; or
2. [ اي ] Carry a gun [firearm] except a .22 caliber rimfire gun [firearm].

(b) [ اي ] Trapping - noon the third day of the modern gun deer season through noon the last day of February.

(2) [ اي ] Coyote:
(a) [ اي ] Hunting: year round.
(b) [ اي ] Trapping: noon the third day of modern gun deer season through noon the last day of February.

(2) [ اي ] Bobcat:
(a) Hunting: noon the third Saturday in November through January 31.
(b) Trapping: noon the third day of the modern gun deer season through January 31.

(d) [ اي ] All other furbearers: noon the third day of the modern
gun deer season through noon, the last day of February.

(5) [Small game and] Furbers taken by falconry: September 1 through March 30.

(6) There shall not be a closed season on:
(a) Chasing red and gray foxes [and-rabbits] during day/night hours for sport and not to kill; and
(b) Chasing raccoons or opossums for sport and not to kill.

(7) [Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license. Statewide requirements and bag limits apply.]

(8) Free youth trapping week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbers without a hunting or trapping license [or permit]. Statewide requirements and bag limits apply.

[Table: Small-Game Bag and Possession Limits]

<table>
<thead>
<tr>
<th>Species</th>
<th>Daily</th>
<th>Possession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Squiare</td>
<td>6</td>
<td>42</td>
</tr>
<tr>
<td>Rabbit</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Quail</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Grouse</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Section 3. [Furbearer] Bag Limits. (1) There shall not be a bag limit on furbers except bobcats, river otters, and those taken by falconry [and-river otter].

(2) A person shall not take more than five (5) [three (3)] bobcats per season; only three (3) bobcats can be taken with a gun.

(3) A person shall not take more than six (6) river otters per season.

(4) [Limits by Season.] A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (4) (66) of this administrative regulation shall not take more than two (2) of any furber, [small-game or furbers species, singly or in the aggregate per day.]

Section 4. Legal Hours of Take. (6. Sheeting-Hours.) A person shall not take [small-game or] furbers by hunting except during the hours specified in this section.

(1) Furbears: daylight hours only, except raccoon and opossum. [Small-game or furbers, except opossum and raccoon: daylight hours only.]

(2) Raccoon and opossum: day or night, except that a person shall not take raccoons or opossums [hunt] during daylight hours during the modern gun deer season.

Section 5. (7) Use of Calls. A hunter may use a hand- or mouth-operated call, electronic call or attracting device.

Section 6. (8) A hunter shall not possess buckshot.

Section 7. (9) Raccoon and Opossum [Hunting] Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person chassing raccoon or opossum from noon, March 1 through October 31 shall not use or carry as:
(a) Gun [Firearm];
(b) Slingshot;
(c) Tree climber;
(d) Squealer;
(e) Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squealer:
(a) The American Coon Hunters Association;
(b) The American Kennel Club/Coon Hunts Association;
(c) The National Kennel Club;
(d) The Professional Kennel Club;
(e) The United Coon Hunters Association; and
(f) The United Kennel Club.

Section 8. [10] Trapping Methods. (1) Except for the bag limits noted in Section 4 of this administrative regulation for river otter and bobcat, there shall not be a daily or possession limit on furbers taken by trapping.

(2) A person trapping on dry land shall not:
(a) Set traps closer than ten (10) feet apart; or
(b) Use a trap except a.

1. Deadfall;
2. Wire cage or box trap;
3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;
4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or
5. A nonlocking snare.

(2) [9] There shall be no restrictions on a trap used as a water set.

(3) [4] A trap shall not be set in a trail or path commonly used by a human or domestic animal.

(4) [6] A trapper may use lights from a boat or a vehicle.

Section 9. [11] Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:

(1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:
(a) Hunter's log section on the reverse side of a license or permit;
(b) Hunter's log produced in a hunting guide;
(c) Hunter's log printed from the Internet;
(d) Hunter's log available from any KDSS agent; or
(e) An index card or reasonable facsimile thereof; and

(2) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.

Section 10. [12] Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by:

(a) Calling the toll free number listed in the current fall hunting and trapping guide on the day the river otter or bobcat is harvested;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log described in Section 10. [14] of this administrative regulation.

(2) If a harvested river otter or bobcat leaves the possession of a hunter and does not have a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag attached to it, the hunter shall attach a handmade tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.

(3) A person shall not knowingly provide false information when completing the hunter's log, checking a river otter or bobcat, or creating a carcass tag.

(4) A person wishing to sell a river otter or bobcat pelt to a licensed fur processor, fur buyer or for export shall call the department's toll-free information number and request a CITES tag by providing:

(a) A valid confirmation number as described in subsection (1) of this section; and

(b) A street address where the tag is to be mailed.

(5) The CITES tag shall be attached to the skin or unskinned carcass per the instructions provided and remain with the pelt until processing.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.
2. Fur processor; or
3. Taxidermist.

(b) No taxidermist or other individual who commercially processes river otter[s] [sell] and bobcats shall:
(a) Accept river otter or bobcat carcasses or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 11(12) of this administrative regulation; and
(b) Keep accurate records of the hunter's name, address, confirmation or CITES tag number, and date received for each river otter or bobcat in his possession.

[Section 14, Pheasant-Hunting—Dates, bag limits, and application procedures and hunting requirements are established in 304-KAR 2.049.]

MARK S. CRAMER, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 14, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by April 30, 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) 564-0506

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

1. Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for hunting and trapping fur bearer species in Kentucky. This administrative regulation establishes season dates, bag and possession limits, methods of taking, and devices used to take identified fur bearer species in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation insures the permanent and continued supply of fur bearer species by protecting them from overharvest.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations governing hunting seasons, including fur bearer and small game species.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. This administrative regulation establishes season dates, bag and possession limits, methods of taking, and devices used to take identified fur bearer and small game species in Kentucky.
(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 will remove regulations regarding the take of small game species and place those in an individual administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow the creation of separate regulations for fur bearers and small game so that acceptable methods of take for small game may be defined as legal hunting methods only.
(c) How the amendment conforms to the content of the authorizing statutes: See "C" above.
(d) How the amendment will assist in the effective administration of the statutes: See "D" above.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Hunters and trappers of furbearers in the Commonwealth will be affected, there are no estimates for the number of persons that hunt furbearers. Currently, there are approximately 950 licensed trappers in Kentucky.
(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, 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 will be required in order to comply with this regulatory amendment.
(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 associated with the implementation of this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue because this amendment makes no changes to current regulations.

(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 associated with the implementation of this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.

What is the source of the funding to be used for the 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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase or decrease any fees.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters and trappers in Kentucky shall comply with the same hunting procedures, seasons and limits.

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 Wildlife and Law Enforcement Divisions will be affected 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 150.025 grants the Kentucky Department of Fish and Wildlife Resources authority to regulate and restrict when, where, and how wildlife are taken.
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 admin-
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Administrative regulation will generate no revenue for the state or local government.
(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 generate no future revenue for the state or local government.
(c) How much will it cost to administer this program for the first year? There will be no costs to implement this new administrative regulation.
(d) How much will it cost to administer this program for subsequent years? There will be no costs to implementing this new administrative regulation.

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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
(AMENDMENT)

815 KAR 4:010. Annual inspection of passenger elevators.

STATUTORY AUTHORITY: KRS 198B.004(18), 198B.490
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 requires the executive director (commissioner) to promulgate an administrative regulation governing the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2). This administrative regulation establishes the safety standards governing the annual inspection of passenger elevators.

Section 1. Annual Inspection of Passenger Elevators and Escalators. (1) Except as provided in subsection (2) of this section, an annual inspection of a passenger elevator or escalator shall be conducted in accordance with the following standards:
(a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 [only] sections 10, 12, and 19 in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2A(3), 2.26.2.3, 2.27.3.2, 2.27.3.7, 2.17.3.3, 2.26.10, 6.1.3.3.9, and 6.5.6.5 for existing elevators and escalators, and the following code edition and addenda of ASME A17.1-2004 [only] including ASME A17.1-1997 Addenda, ASME A17.1b-1998 Addenda, and ASME A17.1c-1999 Addenda; the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;
(b) "Inspectors Manual for Hydraulic Elevators", ASME A17.2-1997 [and ASME A17.2-1996 Addenda];
(c) "Inspectors Manual for Escalators and Moving Walks", ASME A17.3-1996 [and ASME A17.3-1996 Addenda];
(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002 [only], ASME A17.3-2000 Addenda;
(e) "Guide for Emergency Personnel", ASME A17.4-1999;
(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996 [and]
(g) "Safety Standards for Conveyors and Related Equipment", ASME B20.1-1996;
(h) ASME A18.1-1993 in its entirety with the exception of rules 5.7.1 and 10.12.1.

(2) Compliance with a later edition of the standards required by subsection (1) of this section shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified.

Section 2. Inspection Fees. (1) Annual inspection fees for the issuance of a certificate of operation shall be as follows:
(a) Wheelchair and chair lift inspection; $100.00;
(b) Dumbwaiter inspection, where under contract to inspect; $100.00;
(c) Limited-use limited-access (LULA) elevator inspection; $100.00;
(d) Escalator and moving walk inspection; $120.00;
(e) Hydraulic elevator inspection; $100.00;
(f) Inspection of traction elevators (shall be as follows):
1. First ten (10) floors, shall be $100.00 and;
2. Each additional ten (10) floors, or portion thereof, shall be an additional $100.00.
(2) The fee for an inspection conducted at the request of the owner or user of a unit, other than an inspection made pursuant to a permit or annual inspection, shall be based on the same fee schedule as an annual inspection in subsection (1) of this section.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Safety Code for Elevators and Escalators, ASME A17.1-2002 [only], issued December 1998;
(b) [ASME A17.1a-1997 Addenda, issued February 27, 1998,
(c) ASME A17.1b-1998 Addenda, issued February 19, 1999;
(d) ASME A17.1c-1999 Addenda, issued June 30, 1999;
(e) Inspectors Manual for Hydraulic Elevators, ASME A17.2-1997, issued December 31, 1997;
(f) ASME A17.2a-1998 Addenda, issued February 5, 1999;
(g) Inspectors Manual for Escalators and Moving Walks, ASME A17.2-1998, issued February 25, 1999;
(h) ASME A17.2a-2000 Addenda, issued August 10, 2000;
(i) Safety Code for Existing Elevators and Escalators, ASME A17.3-2002 [only], issued February 20, 1997;
(j) ASME A17.3a-2000 Addenda, issued February 20, 2000;
(m) Safety Standard for Platform Lifts and Stairway Lifts, ASME A18.1-2003; and
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office [Department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 10 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:
CONTACT PERSON: David L. Reichert, General Counsel,
Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David L. Reichert

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the safety standards governing the annual inspection of passenger elevators.

(b) The necessity of this administrative regulation: The regulation sets safety standards by which elevators are inspected.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.490 requires the executive director of Housing, Buildings and Construction to make rules and regulations regarding the safety and inspection of passenger elevators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows the inspector to utilize the correct codes.

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: Will eliminate duplicate codes.

(b) The necessity of the amendment to this regulation: It will eliminate the inspectors the proper codes and eliminates those duplicate codes that currently exist in this regulation.

(c) How the amendment conforms to the content of the authorizing statute: Allows the office to utilize the updated codes and clarify for the inspectors the proper code to utilize.

(d) How the amendment will assist in the effective administration of the statutes: Assists the inspectors in their inspections by providing the correct and updated codes.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those entities that utilize elevators that must be inspected.

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 comply with this administrative regulation or amendment: No regulated entity is impacted. Elevators will be inspected by the use of updated codes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Use of updated codes should result in safer elevators to the benefit of owners and passengers.

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: Fees generated cover the cost of inspections.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

9. TIERING. Is tiering applied? Tiering is not applied as it relates to inspections. All elevators are inspected annually and these standards will be used by the elevator inspectors. However, fees are somewhat higher in that higher elevators incur only moderately higher fees that would result by imposing a "per floor" fee.

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 Housing, Buildings and Construction, Elevator Section, and any local government with an elevator inspection program, 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. The statutory authority for this administrative regulation is found in KRS 198B.060 and KRS 198B.490.

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 administrative regulatory amendment will have no impact on expenditures or revenues.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply ensures proper codes are being used in the inspection of elevators.

(d) How much will it cost to administer this program for subsequent years? There will also 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Building Code Enforcement
(AMENDMENT)


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050 Necessity, function, and conformity: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

2. "Building" is defined by KRS 198B.010(4).

3. "Executive director/Commissioner" is defined by KRS 198B.010(9).

4. "Office/Department" is defined by KRS 198B.010(11).

5. "Farm" means property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.

6. "Fire Code Official" means the State Fire Marshal, fire chief
or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety [Fire Prevention Code] as set forth in 815 KAR 10.060 [Chapter-10].

(7) "Industrialized building system" or "building system" is defined in KRS 198B.010(16).

(8) "KBC" means the Kentucky Building Code as established in this administrative regulation.


(10) "KBC Standards of Safety" means the administrative regulations established in 815 KAR 10.060 [Chapter-10], which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(11) "KRS" means the Kentucky Revised Statutes.

(12) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(13) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(14) "Ordinary repair" is defined by KRS 198B.010(19).

(15) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected by any passageway to any other unit or building.

(16) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(17) "Two (2) family dwelling" means a building containing not more than two dwelling units which are connected.


(b)1. Except as provided in subparagraph 2 of this paragraph and as superseded [superseded] by the provisions of this administrative regulation and [or] the 2007 [2003] Kentucky Building Code [Supplement], the International Building Code 2006 [2000], [First Edition, Chapters 1 through 46] shall be the mandatory state building code for Kentucky for all buildings.

2. One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.


Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the office [department].

(1) Fast track elective. A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee. The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000. The entire fee shall be paid at the time of the initial plan submission.

(2) New buildings.

(a) The office’s [departmental] inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section, and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, eight and one-half (8.5) cents;
(b) Business occupancies, seven and one-half (7.5) cents;
(c) Day care centers, seven and one-half (7.5) cents;
(d) Educational occupancies, seven and one-half (7.5) cents;
(e) Frozen food plants, six and one-half (6.5) cents;
(f) High hazard occupancies, seven and one-half (7.5) cents;
(g) Industrial factons, six and one-quarter (6.25) cents;
(h) Institutional occupancies, eight and one-half (8.5) cents;
(i) Mercantile occupancies, seven and one-half (7.5) cents;
(j) Residential occupancies, seven and one-half (7.5) cents;
(k) Warehouses, five and one-half (5.5) cents;
(l) All other nonresidential, six and one-half (6.5) cents.

(4) Additions to existing buildings. Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition. The minimum fee for review of plans under this subsection shall be $200.

(5) Change in use. Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. The minimum fee for review of plans under this subsection shall be $200.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025;

or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be $200.

(7) Specialized fees. In addition to the fees listed in subsection (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:
1. Four (4)-200 sprinklers, $150;
2. 201-500 sprinklers, $175;
3. 501-1000 sprinklers, $210;
4. 401-750 sprinklers, $250;
5. Over 750 sprinklers, $250 plus twenty (20) cents per sprinkler over 750.

(b) Fire detection system review fee:
1. Zero to 20,000 square feet shall be $150;
2. Over 20,000 square feet shall be $150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) Standpipe plan review fee: $150 (combination stand pipe and water plans shall be reviewed under the automatic sprinkler review fee schedule).

(d) Carbon dioxide suppression system review fee:
1. One (1) through ten (10) 200 pounds of agent shall be $150;
2. Over 500 pounds of agent shall be $150 plus two (2) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:
1. Up to thirty-five (35) pounds of agent shall be $150;
2. Over thirty-five (35) pounds shall be $150 plus six (6) cents per pound in excess of thirty-five (35) pounds.

(f) Foam suppression system review fee:
1. Fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the auto-
matic sprinkler review fee schedule.
3. The fee for review of plans under this section shall not be less than $150 or more than $1,500.

(g) Commercial range hood review fee: $150 per hood.

(h) Dry chemical systems review fee (except range hoods):
1. One (1) through (6) thirty (30) pounds of agent shall be $150,
2. Over thirty (30) pounds of agent shall be $150 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) Flammable, combustible liquids or gases and hazardous materials plan review fee: $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.

(j) Boiler and unfired pressure vessel fees: plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 615 KAR 15.027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "2007 [2008] Kentucky Building Code" and
(c) SEASK Document GB 05-01, October 2003.
(d) [Supplement, as amended April, 2008.]
(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDOONE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kent-
cucky. Individuals interested in being heard at this hearing shall notify this agency by writing to Attorney General (30 days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard shall give 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 April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON. David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David L. Reichert
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the uniform Kentucky Building Code required pursuant to KRS 1988.050.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 1988.050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments for Kentucky after due consideration of equivalent safety measures as required by KRS 1988.050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth standards authorized by the statute for the enforcement of the code, incorporating all applicable laws into its processes.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will change the material incorporated by reference by amending the 2003 version of the Kentucky Building Code Supplement. These changes include: Amendments to Chapter 1, Section 101.2 to provide the religious exemptions required by the U. S. Supreme Court and ensuring that religious exemptions are not given for improper reasons. Also, the changes clarify the intent of the KBC to apply to many buildings and structures and similar buildings or structures that are permanently moored to land and substantially a land structure. Amendments Chapter 10, Section 1003.3.13.4 to allow the use of approved mechanical crash bars (panic or fire exit hardware) to unlock individual access controlled doors from egress side. This method is more reliable and safer than the existing option of a powered sensor. Amendments Chapter 10, Section 1005.3.4 to add legal provisions with respect to emergency door enclosures to be cooled and heated with fan coil units located within the exit enclosure. Amendments Chapter 17, Section 1704.1 to allow low-rise buildings with pitched roofs to be treated equally to a two-story building with flat roof as long as under the other limits for not requiring special inspections.
(b) The necessity of the amendment to this administrative regulation: These changes will provide additional clarity and convenience to users of the Kentucky Building Code. In addition, they represent up to date treatment of new building techniques and methods.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 1988.050(4) requires continuing review of the building code and requires adoption of new materials, technologies and techniques when justified. All new amendments to the Kentucky Building Code which are being promulgated by the replacement of the Kentucky Building Code Supplement have been reviewed and approved by the Kentucky Board of Housing, Buildings and Construction pursuant to KRS 1988.050(4).
(d) How the amendment will assist in the effective administration of the statutes: These changes will update and clarify areas of the Kentucky Building Code which are vague, outdated, or incorrect.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Property owners who are remodeling, altering or constructing new buildings; architects and engineers, building inspectors, and all building construction related industries.

(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 comply with this administrative regulation or amendment: The identified entities will have to conform their respective building activities to the requirements of the new building code.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated that the entities will experience an increase in cost. If any increase in cost is experienced to comply with the updated code requirements, the increase should be minimal.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by employing up-to-date construction practices which are believed to result in safer buildings.
(5) Provide an estimate of how much it will cost to implement
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this administrative regulation:
(a) Initially: Since the Kentucky Building Code is currently being enforced, these changes have virtually no cost to implement.
(b) On a continuing basis: This administrative regulation establishes no new costs or fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The administrative fees for plan review and inspection provide funding on an ongoing basis.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because these are standards that apply equally to all construction depending upon the type of building.

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 Office of Housing, Buildings and Construction, Division of Building Code Enforcement, will be impacted as well as any local government that has a building inspection program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This regulation is authorized by KRS 198B.040(7) and KRS 198B.050.

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 effect on expenditures or revenue for the first full year. The Kentucky Building Code is currently being enforced, and this regulatory amendment establishes no new costs or fees.

(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 effect on revenue for the first year.

(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? There will be no effect on revenue for 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 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Executive director/Commissioner" is defined by KRS 198B.010(9).

(4) "Office/Department" is defined by KRS 198B.010(11).

(5) "Executive director" means the Executive Director of the Office of Housing, Buildings and Construction.

(6) "FARM" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(7) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(8) "Manufactured home" is defined by KRS 198B.010(23) and 227 KAR 1:050.

(9) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(10) "Office" means the Office of Housing, Buildings and Construction.

(11) "Ordinary repair" is defined by KRS 198B.010(19).

(12) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(13) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(14) "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2006 [2006] as amended by this administrative regulation and the 2007 [2007] Kentucky Residential Code [Supplement].

(2) Exceptions.

(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, 2006 [2006] as set forth in 815 KAR 7:120.


(4) Effective dates. Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "International Residential Code 2006[2006]; [First Edition]; International Code Council, Inc.; [and]
(b) "2007 [2007] Kentucky Residential Code"; and
(c) FEMA 232, June 2006.

[Supplement, January 15, 2003, as amended March 2006;]
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(39) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: public hearing on this administrative regulation shall be held on April 23, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by April 16, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless 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 April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0384 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. David L. Reichert

(1) Provide a summary of:
(a) What this administrative regulation does: This administrative regulation establishes the building construction requirements for one- and two-family dwellings and townhouses.
(b) The necessity of this administrative regulation: This administrative regulation established the Kentucky Residential Code as part of the Uniform State Building Code as required pursuant to KR 1988 050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 198B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.

(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: Will eliminate the confusion and questions regarding the thickness of stem wall portion of concrete foundations above grade and that have no lateral pressures on them and provides a convenient resource for the basic principles of seismic resistant construction.
(b) The necessity of the amendment to this regulation: Provide a structurally sound alternative to the existing design of concrete foundation walls and the FEMA 223 Guida will be an alternative to the code.
(c) How the amendment conforms to the content of the authorizing statute KRS 1988 050 requires the adoption of a uniform state building code and its continuing review and modification.
(d) How the amendment will assist in the effective administration of the statute: Will provide amendments to the 2003 Kentucky Residential Code which have been approved by the Kentucky Board of Housing, Buildings and Construction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home builders and purchasers as well as local governments, but only if they expect to have a building inspection program for single family dwellings.

(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 comply with this administrative regulation or amendment: The referenced entities will have to modify their respective building activities to conform to the new code requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated to increase the cost of home building or inspection. The new code simply incorporates up-to-date building standards, increased construction cost, if there are any, should be minimal.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They entities will benefit by employing updated construction practices which are believed to result in safer homes.

(5) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It will provide an alternative guide (FEMA 232, 2006) and a structurally sound alternative for concrete foundation walls.

(6) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

(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: None

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(10) TIERING: Is being applied? Tiering is not applied.

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? Local governments that have a residential inspection program will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 1988 080 and KRS 1989 050.
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 effect on expenditures or revenue for the first full year. The Kentucky Residential Code is currently being enforced, and this regulatory amendment establishes no new costs or fees.
(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 effect on revenue 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 effect on revenue for 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 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings And Construction
(Amendment)


STATUTORY AUTHORITY: KRS 227.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires the executive director to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring against fire loss. This administrative regulation establishes the Kentucky Standards of Safety and supplements the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been satisfactorily corrected.

(2) "Distinct fire hazard" means a condition which poses a threat to life or property, including a condition which is likely to unreasonably inhibit escape from danger in the event of fire or explosion, because the property, or the practice or method of construction or operation, condition, or processes or materials being used do not afford adequate protection, since:

(a) A fire, explosion or asphyxiation is likely to occur; or
(b) It may provide a ready fuel supply to augment the spread or intensity of a fire or explosion.

(3) "NFPA" means the National Fire Protection Association.

(4) "NICET" means the National Institute for Certification of Engineering Technologies.

Section 2. Scope. (1) Applicability. This administrative regulation shall apply to all property except one (1) and two (2) -family dwellings.

(2) Enforcement. This administrative regulation shall be enforced as follows:

(a) State Fire Marshal. The State Fire Marshal shall have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; or

(b) Local fire chief.

1. Except as provided in subparagraph 2 of this paragraph, the local official designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary.

2. The State Fire Marshal shall have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.

Section 3. Existing Buildings and Conditions. (1) Buildings and conditions approved under the Kentucky Building Code which is incorporated by reference in 815 KAR 7:120, shall apply as provided in this subsection:

(a) Minimum standard. The standards for the construction of a building constructed pursuant to the Kentucky Building Code in effect at the time of construction and for which there has been issued a lawful certificate of occupancy shall supersede different construction standards regarding the requirements for egress facilities, fire protection and built-in fire protection equipment of this administrative regulation or conflicting local ordinances. Methods of construction that meet the requirements of the Kentucky Building Code shall not be deemed a distinct fire hazard.

(b) New construction. The design and construction of a new building to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code. An alteration, addition or change to the structure which is within the scope of the building code shall be made in accordance with the applicable code.

(c) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof which has the potential to create a greater hazard to the public because of increased structural or fire loading, or inadequate exits for the number of occupants, without prior approval from the authority determined under Section 2 of this administrative regulation.

(2) Buildings and conditions approved under other codes.

(a) Pre-KBC buildings. A building, facility, or portion thereof, which was constructed and approved prior to the effective date of the Kentucky Building Code and this administrative regulation, shall be maintained as previously permitted. A change to the construction of the building in excess of that required by the codes at the time of construction shall not be required if the building is used and maintained as on the date of approval.

(b) Previous fire code. A building, facility, or portion thereof, which was inspected and approved or accepted pursuant to the 1996 Kentucky Fire Prevention Code shall:

1. Be maintained as previously approved or accepted; and
2. Not be required to make a modification or change if it is maintained and used as previously approved or approved.

(3) Certificate of use. If the State Fire Marshal or local fire chief finds an existing building or facility to be in substantial compliance with this administrative regulation, without a violation of an order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use of the building or facility, if the certificate was required at the time of construction. The use may continue without change if it is used and maintained and approved.

(4) Hazardous materials, conditions and buildings.

(a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, he shall cause the fire hazard to be remedied so as to render the property reasonably safe.

(b) The State Fire Marshal shall use the standards specified in this paragraph to identify and to order the correction of a distinct fire hazard and shall act in accordance with the procedures established in KRS Chapter 227 and Section 5 of this administrative regulation.

The following shall be applicable, except those specifically excluded codes and references:

1. NFPA 1, Uniform Fire Code, 2006 edition, and the NFPA referenced standards included in NFPA 1. The following codes and references shall be excluded from NFPA 1 for purposes of this administrative regulation:


e. Code reference 13.3.2.4 2, High Rise Buildings; [and]

f. Code reference 13.3.2.6.1, Existing Assembly Occupancies; and

g. Code reference 13.6.1.2, Portable Extinguishers, where required, is modified to exclude the prohibition for installation of portable extinguishers in the occupancies listed in Table 13.6.1.2. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2006 Edition.

this administrative regulation:

a. NFPA 5000, Building Construction and Safety Code, 2006 edition; and

b. Code reference 13.3.5.1, Extinguishment Requirements.

c. The Kentucky Building Code, which shall apply to a new building and to an alteration, addition, or change of use in accordance with subsection (1) of this section.

4. Superseding provisions. If a provision of this administrative regulation establishes regulatory criteria different from the criteria established in a code specified in subparagraph 1 or 2 of this paragraph, the provisions of this administrative regulation shall supersede any provision incorporated by reference.

5. Modifications, alternatives, interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting copies.

6. A condition, equipment, building, facility or portion thereof or an alternative designed to meet the intent of a code provision which has been accepted or approved in accordance with subsection (2) of this section shall not be considered a distinct fire hazard, if it is maintained and used as accepted or approved.

5. Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require the construction measures which would exceed the requirements of the current edition of the Kentucky Building Code if the building were newly constructed.

6. Maintenance of equipment. All fire suppression and fire protection equipment, systems, devices and safeguards shall be maintained in good working order. This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device that exists in a building or facility.

7. Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are being applied.

Section 4. Permits. (1) State permits required. A permit shall be required from the State Fire Marshal for the following types of installations:

(a) Elevator Installations and alterations;

(b) Boiler Installations and alterations; and

(c) Flammable, combustible and hazardous material storage vessel installations.

(2) Local permits allowed. A permit from a local government shall not be required unless it is required by local ordinance. An inspection of the permit, if applicable, shall be stipulated in the local adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of the administrative regulation and the standards incorporated herein or other codes or ordinances under his jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency, citing the applicable code provision and specifying a time period in which the required repairs or improvements shall be completed.

(2) Service of notice. The written notice of deficiency shall be served upon the owner or his duly authorized agent and upon each other person responsible for the deficiency.

(3) Failure to correct deficiency. Except if an appeal is in process pursuant to Section 6 of the administrative regulation, each deficiency shall be considered a violation. If a correction required in the notice of deficiency is not completed within the time specified, the appropriate legal proceedings to compel compliance may be requested by the authority having jurisdiction.

Section 6. Means of Appeal. (1) State Fire Marshal appeal. An appeal to the State Fire Marshal from a notice of deficiency issued by an employee or deputy of the State Fire Marshal shall be in writing and shall be requested prior to the completion date required by the notice. If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, other legal action may be instituted pursuant to KRS Chapter 227.

(2) Local appeals. If a local government adopts an ordinance for the enforcement of this administrative regulation, the appeal from a decision of the local fire chief shall be to the person or entity as provided by the ordinance.

Section 7. Temporary Occupancies. A change in use, subject to Section 3(1)(c) of this administrative regulation, shall not be prohibited if the building is being used for temporary purposes, in accordance with the requirements of this section.

(1) Time limit. The use of the building shall not exceed a total of thirty (30) days in a calendar year.

(2) Prior notice. The owner or the owner of the property shall notify the State Fire Marshal or local fire chief, in writing, of the proposed new use, stating the nature of the use of the building and the precise dates and times the building is to be occupied.

(3) Inspection. In the notification, the owner shall consent to inspection and an opportunity for the inspection of the building shall be afforded to the State Fire Marshal or local fire chief, upon request.

(4) Safety requirements. The property owner shall be responsible for maintaining the fire safety of the building and shall comply with the applicable provisions of this administrative regulation for the proposed use, as required by the State Fire Marshal or local fire chief.

Section 8. Special Provisions. (1) Passenger elevator incidents [as amended].

(a) Notification of Chief Elevator Inspector [State Fire Marshal]. The owner of the building shall immediately notify the Chief Elevator Inspector [State Fire Marshal] of every incident [as defined] involving personal injury, persons rescued from a stalled elevator by emergency or maintenance personnel, or damage to the apparatus on, about or in connection with a passenger elevator and shall afford the State Elevator Inspector [State Fire Marshal] every facility for investigating the incident [as defined].

(b) Discontinued use of elevator. If an incident [as defined] involves the failure, breakage, damage or destruction of a part of the apparatus or mechanism, it shall be unlawful to use the device until after a examination by the State Elevator Inspector [State Fire Marshal] is made and approval of the equipment for continued use is granted.

(c) Removal of damaged parts. If an incident [as defined] involves personal injury or damage to the apparatus, it shall be unlawful to remove a part of the damaged construction or operating mechanism of the elevator or other equipment from the premises until permission has been granted by the State Elevator Inspector [State Fire Marshal].

(2) Fire incident reporting. The fire chief or highest ranking fire department officer shall promptly notify the State Fire Marshal upon becoming aware of any of the following:

(a) A hazardous materials incident;

(b) Fire-related fatality (including a vehicle or home);

(c) Fire-related injury serious enough to become a fatality; or

(d) A fire involving major structural damage in the following buildings:

1. All institutional, educational, state-owned or state-leased and high-risk occupancies;

2. All business, mercantile and industrial occupancies having a capacity over 100 persons;

3. All assembly occupancies, except churches, having a capacity over 100 persons;

4. Churches with a capacity over 400 persons and more than 6,000 square feet; or

5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.

(3) Fire protection systems testing and inspection.

(a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection or test required by Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported by a person authorized or certified by the State Fire Marshal.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on an appropriate form [as defined] contained in NFPA 25 or NFPA 72 and approved.
by the State Fire Marshal.

2. The appropriate forms shall be forwarded to the State Fire Marshal within ten (10) working days of the date of the inspection, if any violations are noted.

(c) Reporting exceptions. A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and their agent. These reports shall not be required to be filed with the State Fire Marshal.

(d) Frequency. Periodic test and inspection of a fire suppression or alarm system shall be performed as follows:

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested quarterly; and

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the office on a Form FFS 33-01 and for renewals on Form FFS 33-02 and shall:

a.(i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

b. Pass the examination for alarm inspector administered by an approved examination provider;

c. Have had at least eighteen (18) months of experience, training, or instruction in fire alarm systems within the immediately prior five (5) year period;

d. Pay a yearly certification fee of fifty (50) dollars for each classification, which shall be valid until the inspector's birth month and renewed annually thereafter;

e. Submit a passport size color photograph with the application or renewal form; and

f. Have six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(g) Provide proof of current NICET certification.

2. Penalties. A person shall not:

a. Fail to conduct an inspection in accordance with NFPA 72 standard;

b. Submit false inspection reports;

c. Conduct inspections without first having been certified by the office as a fire alarm inspector; or

d. Make a false or misleading statement on an application for certification or renewal.

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

(a) NFPA 1 "Uniform Fire Code", 2006 edition;


(c) FFS 33-01, "Application for Fire Alarm Systems Certification", April 2006; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary

APPROVED BY AGENCY: March 12, 2007

FILED WITH LRC: March 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007 at 1 p.m. in the conference room at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, 100 Suite, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by

April 16, 2007 (five working days prior to the hearing), of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless 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 April 30, 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: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, 100 Suite, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David L. Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 227.300 requires the executive director to establish the Kentucky Standards of Safety which provides a reasonable degree of safety for human life against the exigencies of fire and panic and insuring against fire loss.

(b) The necessity of this administrative regulation: This administrative regulation sets forth the Kentucky Standards of Safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.300 requires the Office to promulgate "Standards of Safety" administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation sets forth the standards of safety and represents the most up-to-date safety 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 amendment updates a code reference regarding portable extinguishers, corrects typographical errors in section 6 regarding elevators and carries forward elevator changes made in the Kentucky Building Code.

(b) The necessity of the amendment to this administrative regulation. The amendment is necessary to update the elevator section to be in compliance with references and codes in the Kentucky Building Code. It also updates code references regarding portable extinguishers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the references in the elevator section and references regarding installation of portable extinguishers.

(d) How the amendment will assist in the effective administration of the statutes. The amendment will allow the use of updated references in both the elevator section and the installation of portable extinguishers.

(3) List the type and number of Individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Division of Fire Prevention, Elevator Section, State Fire Marshal and deputized fire departments will be affected by this change as will those owners of properties subject to inspections.

(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 will be impacted only by having the codes by which they inspect updated. Property owners will be impacted to the extent their property is subject to inspection.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None. Only the codes used to inspect are being updated.

(c) As a result of compliance, what benefits will accrue to the

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entities identified in question (3); The benefit of the changes is that updated standards are going to be used resulting in safer conditions.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: Will not impact any funds.
   (b) On a continuing basis: Does not impact any funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No increase funding is expected to be required.

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

(9) TIERING: Is being applied? Tiering is used. The amendment updates the elevator code to be in compliance with references and codes in the Kentucky Building Code. It also updates code references regarding portable extinguishers.

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? The Kentucky Office of Housing, Buildings and Construction, Division of Building Code Enforcement, will be impacted by this administrative regulation. Additionally, the Division of Fire Prevention, Elevator Section and the Office of the State Fire Marshal will be impacted. Local jurisdictions and fire departments will also be impacted to the extent they have jurisdiction and will inspect to ensure that safety requirements are met.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 227.300 and KRS 250.453.

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 administrative regulatory amendment will have no impact on expenditures or revenues:
   (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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.
   (c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply updates the Standards of Safety to include the most up-to-date codes, eliminates typographical errors and carries forward changes in the Kentucky Building Code to reflect changes to the elevator program.
   (d) How much will it cost to administer this program for subsequent years? There will also 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130 NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) *ABS* means acrylonitrile-butadiene-styrene pipe.
(2) *APML* means the "Approved Parts or Materials List."
(3) *ASTM* means American Society for Testing Materials.
(4) *Code* is defined by KRS 318.010(11).
(5) *Committee* means the State Plumbing Code Committee.
(6) *Office* means the Office of Housing, Buildings and Construction.
(7) *Parts or materials* means all types of fittings and piping used in the soil, waste and vent systems, house sewers, portable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(8) *Person* is defined by KRS 318.010(9).
(9) *PVC* means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.
(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the office as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee’s next scheduled meeting for the purpose of amending the APML. The request shall include:
(a) A description of the part or material for which approval is sought;
(b) Available technical data;
(c) A listing of other authorities which have approved the use of the part or material; and
(d) Any other pertinent information requested by the committee.
(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the office.
(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.
(c) Upon approval of a recommendation by the office, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601.
Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed and approved by the Kentucky Plumbing Code Committee and approved by the Office [Division of Plumbing] and shall be allowed for installation in Kentucky.

1. Flexplot three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.
2. (a) Flushmate water closet tank.
   (b) Microphor company. Two (2) quart flush toilets.
   (c) Jomar 3 and 4 water conserving water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.
   (d) Superine toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.
3. EFO Sanitar AB Model 3160 and 3180 China Water Closet equipped with a Flushmaster 4003A-F77 Ballcock.
5. Dual flush water closets by Caroma, USA. The water closets shall use eight tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.
6. (a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.
   (b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.
   (c) Zoeller Drain pump and HI Lo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.
   (d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by A. K. Industries.
   (e) Little Giant Pump Company, Drainoilsan Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.
7. Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.
8. Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.
9. (a) Electric Drain System as manufactured by Myers for light commercial and household usage.
   (b) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a creosote base forming a water tight seal with the stack that it serves.
   (c) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.
10. Deklite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Builtrope Corporation.
11. Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.
13. (a) Kitchen sink faucets. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.
14. Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibo Co.
15. Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.
16. Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or be surrounded by six (6) inches of sand grillage.
17. Floor drains, shower drains, urinal drains and cleanouts manufactured by Plastic Oddities, Inc.
18. Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.
20. Water heaters, point of use or instantaneous.
   (a) In Sink-Erotor's Ultra System. For Instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.
21. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short Shank valve and shall be installed with the product.
22. Vtsaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve, and connected so that the water temperature couple of the relief valve extends into the heat chamber discharge.
25. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.
26. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.
27. International Technology Sales Corporation Zanker Faucet Model WOSU without a temperature and pressure relief valve.
28. Amcot hot water heater model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.
29. Chronomet Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.
31. Nova Hot Water Generator Models: VESST/10, VESST/16, VESST/14, VESST/16, VESST/18 and VESST/22 as manufactured by Hot Water Generators, Inc.
32. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP shall be equipped with an approved temperature and pressure relief valve.
33. Ariston electric water heaters, model numbers P-15S and P-10S shall be equipped with an approved temperature and pressure relief valve.
34. Vaillant Corporation gas fire point of use water heater.
35. Innorn Hot Man Tankless Water Heater as manufactured by Siemens.
36. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.
37. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100206; #100240; #100280; #100240; #100240; #102024; #153208; #153208; #183400; #183400; #183400; #183400.
for supplying hot water for showers.


21. Bosch Aqua Star tankless water heater. Models 125X, 125S, 125SS, 125FX and 368. All models shall be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gal-lon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired Instantaneous wa-ter heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.


31. Quietside Instantaneous Water Heater Models: QYW8 - 10, QYW12, QYW17. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Selcos Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Onion fittings for acid waste piping systems for above and below ground.

(13) R & G Stone Manufacturing Company. Fusesal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C977-76. The density of the membrane shall be at least one-thousand (1000) pounds per cubic inch.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aquab-Flo Cor-poration limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCOP Angle Stop quick connect valve for use with hot and cold potable water Installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.


(d) Rockford separators for grease, oil, and solids in vari-ous styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their in-tended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Snv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior over exceeding all the material and service test re-quirements of ASTM D-3034-96 [24] except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Ejer plumbing ware - Elgers ultra one/g water closet.

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate addition waste openings shall be located in the pump chamber above the top of the base chamber.

(b) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canpas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bbby-Stre-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Inressor/Reducer transition bushings is included in this approval.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Latcrete 9235 Waterproof Membrane to be used as a safting material for floors and walls in showrooms, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Piping Systems, Inc. for use on one-inch (1) inch.

(33)(a) Femco Lowflow Shielded Couplings, approved for connecting cross-steel, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Femco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panelli Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR4 in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining
copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40)(d) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.

(41)(e) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion.

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC.

(43) HubSatIn Line Test Coupling: PVC and ABS test couplings produced by HubSatManufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Figdrg ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturers installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment. After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to 815 KAR 20.150. The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal.

(48) Rhino Wet Waste Interceptor manufactured by Ecosytems Inc. to be used as a pretreatment of wet wastes before discharging to a grease trap or interceptor.

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products Inc.

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIP1 301-00.

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:

(a) A plumbing construction permit shall be required;
(b) Installation shall be by a licensed plumber;
(c) Water quality shall be tested before and after each project;

and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM."

(53) Base Products Corporation:

(a) Water powered pump: basemump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only.
2. Be approved for groundwater removal only; and
3. Require incoming water pressure of 50 psi to operate.
(b) Battery back-up pump: hydropump.

(54) Penna-Liner Industries, Inc. Lateral Lining System.

(e) This system is approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.

(b) Interior applications shall be videod before and after installation and shall have a five (5) pound air test or equivalent for a period of fifteen (15) minutes as required by 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videod before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) A permit shall be obtained prior to an exterior or interior application.

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only.

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer.

(57) Maxliner.

(a) This system is approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations.

(b) Interior applications shall be videod before and after installation and shall have a five (5) pound air test or equivalent for a period of fifteen (15) minutes as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videod before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications.


(a) This system is approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations.

(b) Interior applications shall be videod before and after installation and shall have a five (5) pound air test or equivalent for a period of fifteen (15) minutes as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videod before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications.

(59) Schlturer Shower System for waterproofing tiled shower installations installed per manufacturer recommendations.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LGC March 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 15, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 EXT. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: David Reichert

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(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a parts and materials list that has been approved for use in the state of Kentucky.
(b) The necessity of this administrative regulation: To add a new product.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to add parts and materials to be used within the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows plumbers to utilize new and improved parts and materials.
(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: Will add a new product for plumbing installations.
(b) The necessity of the amendment to this administrative regulation: New parts and materials are constantly updated to allow plumbers to utilize the best and newest product on the market.
(c) How the amendment conforms to the content of the authorizing statutes: By allowing new parts and materials to be utilized by plumbers.
(d) How the amendment will assist in the effective administration of the statutes: Assists plumbers in using new parts and materials in plumbing installations.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those businesses that sell the products and the plumbers that install new parts and materials.
(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: Plumbers and business selling products are impacted solely by having a new product available.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated by having a new product available.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The availability of a new product offers plumbers an additional option in waterproofing tiled shower installations.
(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: Existing revenue.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.
(9) TIERING: Is tiering applied? Tiering is not applied. The new product is permitted for use in all applicable contexts. Differences in types of structures or other such factors are 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? The Kentucky Office of Housing, Buildings and Construction, Division of Plumbing 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. The statutory authority for this administrative regulation is found in KRS 318.130.
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 regulatory amendment will have no impact on expenditures or revenues.
(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the approved parts and materials list for use by plumbers.
(d) How much will it cost to administer this program for subsequent years? There will also 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: The office [department] is directed by KRS 318.130 [through the State Plumbing Code Committee] to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the method needed for storage, handling and installation of standard dimension ratio (SDR) 11, chlorinated polyvinyl chloride [polyvinyl-chloride] (CPVC) plastic pipe and fittings. [The administrative regulation is being amended to allow the use of a newly-developed product that has been deemed equal to that which has been required in the past.]

Section 1. Storage and Handling. (1) Chlorinated polyvinyl chloride [polyvinyl-chloride] (CPVC) pipe, tubing and fittings shall be stored under cover to avoid unnecessary dirt accumulation and long-term exposure to sunlight. Pipe and tubing shall be stored with continuous support in straight, uncrossed bundles. Care shall be used in handling to avoid unnecessary abuse such as abrasion on concrete or crushing.
(2) Solvent cement and primers, because of flammability, shall be stored in an area where there shall be no exposure to ignition, sparks, open flames or heat. Solvent cement and primers shall not be used beyond their marked shelf life.

Section 2. Installation. (1) Correct assembly shall consist of the following steps:
(a) Cut the pipe square;
(b) Remove burns;
(c) Clean both pipe end and fitting socket with a recommended CPVC cleaner, unless using an approved one (1) step cement;
(d) Apply a liberal coat of CPVC solvent cement to the pipe
and apply a light coat of cement to the fitting socket; removing all excess cement from the interior which may dog the waterway;

(e) Assemble immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled; and

(f) Remove excess cement from the joint.

(2) To determine if a joint has been properly assembled, a small bead of cement shall appear at the junction between the pipe or tubing and the fitting.

Section 3. Installation Temperature. Extra care shall be taken if installing in temperatures below forty (40) degrees Fahrenheit or above 110 degrees Fahrenheit. The manufacturer's installation instructions shall be followed carefully.

Section 4. Hangers and Supports. Support shall be provided at each floor level for piping installed in vertical runs. For horizontal runs, support shall be provided at three (3) foot intervals for pipe one (1) inch or less in diameter and at four (4) foot intervals for larger pipe sizes. Piping shall not be anchored tightly to a support but secured with smooth straps or hangers allowing for movement caused by expansion and contraction. Hangers shall not have rough or sharp edges that come in contact with the piping.

Section 5. CPVC-to-metal Transitions. CPVC threaded adaptors shall not be used to transition to metal. Only fittings produced with brass threads can be used to transition to metal. Union type fittings which include gaskets or o-rings, or both shall not be used. Composite type transition fittings which include ferrules may be used. [Assembly shall be in accordance with the manufacturer’s instructions. Union and compression type transition fittings may include ferrules or o-rings, or both, which form an essential part of the fitting assembly and shall not be omitted. Plastic socket female threaded adaptors shall be installed with a manufacturer's recommended thread sealant.]

Section 6. Thermal Expansion. The linear thermal expansion rate for CPVC is approximately one-half (1/2) inch for each ten (10) degrees Fahrenheit temperature change for each 100 feet of pipe or tubing. When installing long runs of pipe, allow one-sixteenth (1/16) to three thirty-seCONDS (3/12) inch longitudinal clearance per foot of run to accommodate thermal expansion. Proper design includes offsets of twelve (12) inches or more every ten (10) feet on vertical risers if they are restrained by horizontal branches at each floor. Piping shall not be anchored tightly to a support but secured with smooth hangers allowing for any movement caused by expansion and contraction.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 8 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichart, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 EXT.
144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Reichart

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes standards for the storage, handling and installation of chlorinated polyvinyl chloride (CPVC) plastic pipe and fittings.
(b) The necessity of this administrative regulation: This regulation establishes standards for the use of CPVC to ensure compliance with the Kentucky State Plumbing Code and allows for use of new, developed products.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes standards for the use of CPVC in construction, installation or alteration of plumbing and plumbing fixtures.
(e) How this amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment allows for the use of a newly developed product and removes a previously approved class of products when used in a transition from CPVC to metal.
(b) The necessity of the amendment to this administrative regulation: This amendment allows for the use of a newly developed product and removes a previously approved class of products when used in a transition from CPVC to metal. The previously approved class is no longer supported by the manufacturers of the product.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 allows for periodic amendment of the Kentucky State Plumbing Code. KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures.
(d) How the amendment will assist in the effective administration of the statutes: KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures. This amendment allows for a new technology while replacing a product no longer supported by the product's manufacturer when used in a transition from CPVC to metal.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed plumbers and those doing business with plumbers 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, if new, or by the change, if it is an amendment, including:
(b) 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: Licensed plumbers will have to conform their practices of transitioning from CPVC to metal. It specifies which fittings may be used.
(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The different type of fitting is not expected to increase costs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There should be no initial cost associated with the implementation of this administrative regulation.
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(b) On a continuing basis: There should be no ongoing cost associated with the implementation of this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There should not be an increase in fees or funding associated with the change to this administrative regulation.

(b) 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 fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All licensed plumbers are treated equally and have equal access to the new products under the Kentucky State Plumbing Code.

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 Housing, Buildings and Construction, Division of Plumbing, and any local government that conducts plumbing inspections 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. The statutory authority for this administrative regulation is found in KRS 318.130.

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 administrative regulatory amendment will have no impact on expenditures or revenues.

(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 regulatory amendment will not generate revenue 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 regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the approved parts and materials list for use by plumbers.

(d) How much will it cost to administer this program for subsequent years? There will also 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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing

(AMENDMENT)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS 318.010, 318 130, 318.150

STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office [department], through the State Plumbing Code Committee, to promulgate an administrative regulation establishing a State Plumbing Code [EO-2003-084 filed-December 23, 2003 created the Environmental and Public Protection Cabinet-EO 2004-031 filed-January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction.] This administrative regulation establishes requirements for traps and clean-outs to prevent harmful gases and odors from entering a building or home that is served by a plumbing system and identifies the manufacturer's specification number of the material accepted in an installation.

Section 1. Traps, Kind and Minimum Size. (1) A Trap shall be self-cleaning.

(2) A trap for a bathtub, lavatory, sink or other similar fixture shall be made of the following:

(a) Tubular brass;

(b) Tubular ABS or PVC produced and labeled as ASTM F-409;

(c) Cast brass;

(d) Cast iron;

(e) Lead.

(f) Schedule 40 PVC or:

(g) ABS [either be tubular brass, tubular ABS or PVC produced and labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile butadieene styrene) trap]

(3) A tubular or schedule 40 PVC or ABS p-trap shall be either the union-joint or solvent welded type.

(4) A tubular brass trap shall be seventeen (17) gauge.

(5) A tubular brass, tubular PVC or tubular ABS trap shall not be installed below the finished floor serving a fixture.

(6) A trap shall have a full bore, smooth interior wayway.

(7) The threads in a cast brass or cast iron trap shall be tapped out of solid metal.

(8) A lead trap shall be extra heavy.

Section 2. Prohibited Traps [-Prohibited]. A trap which depends upon the action of a movable part or concealed interior partition for its seal shall not be used.

Section 3. Required Traps [-Where-Required]. (1) A fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal.

(2) Waste from a bathtub or other fixture shall not discharge into a water closet bend.

(3) A fixture shall not be double trapped.

Section 4. Water Seal A fixture trap shall have a water seal not less than two (2) inches nor (or) more than four (4) inches.

Section 5. Trap Clean-outs. A trap clean-out shall be optional.

Section 6. Trap Levels and Protection. A trap shall be set true with respect to its water seal and shall be protected from frost and evaporation. Trap primers shall be required on all floor drains and open receptacles in commercial - mechanical/boiler rooms and on open receptacles that receive the discharge from a temperature and pressure relief device discharge only.

Section 7. Pipe Clean-outs. (1) The bodies of clean-out funnels shall be made in a standard pipe size, conforming in thickness to that of the pipe and fittings and shall not extend less than one-quarter (1/4) inch above the hub in which it is placed.

(2) The clean-out cap or plug shall be yellow-brass, PVC, or ABS not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Required Pipe Clean-outs [-Where-Required]. (1) In a building served by a stack over forty-five (45) feet in height, a clean-out shall be provided at the base of each vertical waste or
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TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David L. Reichert

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Establishes requirements for traps and clean-outs to prevent harmful gases and odors from entering a building or home that is served by a plumbing system and identifies the manufacturer's specification number of the material accepted in an installation.
   (b) The necessity of this administrative regulation: To ensure that Kentucky plumbers and property owners have access to the latest materials and products in installing plumbing systems.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation relates to safer operation of plumbing and plumbing fixtures as contemplated by KRS 1988.040 and 318.130.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides standards and guidelines for the materials and practices to be used in installing traps and clean-outs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment provides better access and service to sewer and drain lines for the consumer.
   (b) The necessity of the amendment to this administrative regulation. It provides better access and service to sewer and drain lines for consumers.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the use of safe plumbing materials.
   (d) How the amendment will assist in the effective administration of the statutes: The statutes require the establishment of a state plumbing code designed to ensure that plumbers and consumers have access to the latest products and materials while promoting public safety and the integrity of the plumbing system. This amendment sets forth the latest materials to be used in traps. This amendment also clarifies which traps and clean-outs are required or prohibited and specifications to ensure a safer more efficient plumbing system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property owners may 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:

FLOYD VAN COOK, Executive Director

soil stack.
(2) There shall be at least one (1) clean-out in the building drain with a full-size branch inside the wall or outside the building at a point not to exceed two (2) feet from the foundation wall. This
   clean-out shall be a two (2) directional fitting or a combination of
   sanitary tees or tee wyes to allow cleaning in both directions.
   (3) If located outside the building, the clean-out shall be ex-
   tended to the finished grade for accessibility.
(4) A clean-out shall be of the same nominal size as the pipe it
   serves up to four (4) inches and shall not be less than four (4)
   inches for larger pipe.
(5) Clean-outs installed on a four (4) inch sewer shall be a two
   (2) directional fitting or a combination of sanitary tees or tee
   wyes to allow cleaning in both directions.

Section 9. Manholes. An underground clean-out in a building shall be:
   (1) [: except if clean-out is] Flush with the floor or wall; or [:]
   (2) [shall be made] Accessible by a manhole [or with a proper
   cover]

Section 10. Clean-outs (Equivalents). A floor or wall connection of a fixture [trap, whether belted or screwed to the floor or wall] shall be regarded as a clean-out. However, such fixtures shall not be regarded as a [with the exception of the] clean-out where the house drain enters a building.

Section 11. Grease Traps. (1) If a grease trap is installed, it shall be:
   (a) Placed as near to the fixture it serves as practical; and
   (b) Approved by the office [department]
(2) A grease trap used inside a building shall:
   (a) Have a sealed cover; and
   (b) Be properly vented
   (3) A grease trap shall be installed for a restaurant, food ser-
   vice establishment or other business establishment as required by:
   (a) Applicable administrative regulations promulgated by the
   Office of Housing, Buildings and Construction; or
   (b) Municipal ordinance.
   (4) If a food establishment uses a private sewage system, a
   grease trap shall be installed as required by 902 KAR 10.085.

Section 12. Sand Traps. A sand trap shall be: (1) Readily ac-
   cessible; and
   (2) Shall serve the purpose intended. [meet the requirements
   established in the applicable administrative regulations promu-
   gulated by the Office of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. (1) A basement floor drain shall:
   (a) Connect to a trap,
   (b) Be readily accessible for cleaning, and
   (c) Be of sufficient size to serve the purpose intended
   (2) If a drain is subject to back flow or back pressure, the drain
   shall be equipped with a backwater valve that complies with Sec-
   tion 14 of this [approved by] administrative regulation [of the Office
   of Housing, Buildings and Construction.

Section 14. Back Water Valves. A back water valve shall be:
   (1) Of noncorrosive material; and
   (2) Constructed to insure a positive mechanical seal except if discharging waste.

Section 15. Residential Utility Room Floor Drains. A two (2)
   inch floor drain with an individual waste and vent may be installed
   in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. A
   kitchen sink unit or fixture with more than one (1) unit may be con-
   nected with a continuous-waste, if a directional flow fitting is used.
   Continuous-waste shall be either seventeen (17) gauge tubular
   brass or schedule 40 ABS or PVC or tubular ABS or PVC material.
(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: Plumbers will have to conform their practices to the new requirements to ensure that traps and cleanouts are used and installed properly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The new standards should not increase the cost to plumbers or property owners because they relate to installation methods.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbers and property owners will benefit from the requirement of better access and service to sewer and drain lines and from the use of a more efficient system.

(d) Provide an estimate of how much it will cost to implement this administrative regulation: None

(2) On a continuing basis: None

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

(2) 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 funding is necessary.

(2) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(2) TIERING: Is tiering applied? No tiering is applied. All plumbing traps and cleanouts are subject to the same standards. Differences as to types, size, etc., do not require different standards.

**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 Housing, Buildings and Construction, Division of Plumbing 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. The statutory authority for this administrative regulation is found in KRS 318.130.

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 current full year. This administrative regulation is to be in effect. This administrative regulatory amendment will have no impact on expenditures or revenues.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to installation methods for the specified parts and products.

(d) How much will it cost to administer this program for subsequent years? There will also 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.

**Enforcement and Public Protection Cabinet**

Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing

(Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NEECESSITY, FUNCTION, AND CONFORMITY: The office is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation establishes the types of piping and pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the matenal accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means the American Society of Sanitary Engineers, 901 Canterbury, Suite A, Westlake, Ohio 44145.

(2) "ASTM" means the American Society for Testing Materials, 100 Barr Harbor Drive, P. O. Box C700, Conshohocken, Pennsylvania 19428-2969.

(3) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DVWV" means drain, waste and vent piping.

(5) "NSF" means the National Sanitation Foundation.

(6) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the office and other governing authorities. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service.

(d) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, cooking, or culinary use or the processing of a medicinal, pharmaceutical or food product.

(e) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(f) A cross connection shall be prohibited unless:

(a) The connection meets the other requirements established in this administrative regulation; and

(b) A suitable protective device is installed.

(g) A cross connection between a private water supply and a public water supply shall not be made.

(h) Closed water systems, protection from excess pressure.

(i) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer’s instructions shall be installed in the cold water supply located near the water heater.

(j) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20:220 shall be installed in the water distribution system.

(k) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.
(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:
   a. Twice the effective opening of a potable water outlet; or
   b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

<table>
<thead>
<tr>
<th>Fixture</th>
<th>Minimum Air Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter</td>
<td>1 inch</td>
</tr>
<tr>
<td>Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter</td>
<td>1 1/2</td>
</tr>
<tr>
<td>Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter</td>
<td>2 inches</td>
</tr>
<tr>
<td>Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)</td>
<td>1</td>
</tr>
<tr>
<td>Effective openings greater than 1 inch</td>
<td>2 x diameter of effective opening</td>
</tr>
</tbody>
</table>

NOTE 1. Side walls, nibs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, nibs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or nibs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available, and be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the orifice level (CL) is installed at the required height in accordance with the following table:

<table>
<thead>
<tr>
<th>Critical Level (CL) Settings for Atmospheric Type Vacuum Breakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixture or Equipment</td>
</tr>
<tr>
<td>Aspirators, ejectors, and showers</td>
</tr>
<tr>
<td>Bidets</td>
</tr>
<tr>
<td>Cup beverage vending machines</td>
</tr>
<tr>
<td>On models without built-in vacuum breakers:</td>
</tr>
<tr>
<td>Dental units</td>
</tr>
<tr>
<td>Dishwashing machines</td>
</tr>
<tr>
<td>Flusometers (dustbin &amp; urinal)</td>
</tr>
<tr>
<td>Garbage can cleaning machines</td>
</tr>
<tr>
<td>Hose bibs (sinks or receptacles)</td>
</tr>
<tr>
<td>Hose outlets</td>
</tr>
<tr>
<td>Laundry machines</td>
</tr>
<tr>
<td>Lawn sprinklers</td>
</tr>
<tr>
<td>Steam tables</td>
</tr>
<tr>
<td>Tanks &amp; vats</td>
</tr>
</tbody>
</table>

(f) Barometric loop: applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. A backflow and back siphonage preventer shall be in an accessible location, preferable in the same room as the fixture or connection it protects. A device may be installed in a utility or service space. A device or air gap shall not be subject to flooding or freezing.

(h) Inspection of devices. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis. Records shall be kept on each inspection.

(i) Approval of devices. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph (l) of this subsection. A device installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

(j) Protection of potable water system. A potable water opening, outlet or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard, if there is potential for contamination by a toxic substance or disease-causing organism;

2. Moderate hazard, if there is potential for contamination by a nontoxic but objectionable substance, or

3. Minor hazard, if there is potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

3266
<table>
<thead>
<tr>
<th>TYPE AND PRESSURE</th>
<th>DESCRIPTION</th>
<th>INSTALL AT</th>
<th>EXAMPLES OF INSTALLATIONS</th>
<th>APPLICABLE SPECIFICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced Pressure Principle Backflow Preventer For high hazard cross connections.</td>
<td>Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball type test cocks.</td>
<td>All cross connections subject to back pressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure.</td>
<td>Main Supply Lines, Commercial Boilers, Cooling Towers, Hospital Equipment, Processing Tanks, Laboratory Equipment, Waste Digesters, Car Wash, Sewage Treatment, Lawn Sprinklers</td>
<td>ASSE No. 1013 AWWA C506 FCCCHP of U.S. CSA B.64.4 Sizes 3/4&quot; - 10&quot;</td>
</tr>
<tr>
<td>(A) Double Check Valve Assembly For low hazard cross connections.</td>
<td>Two independent check valves. Supplied with shut-off valves and ball type test cocks.</td>
<td>All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure.</td>
<td>Main Supply Lines, Food Cookers, Tanks and Vats, Commercial Pools</td>
<td>N O FCCCHP T U.S.C. X CSA B 64.5 T Sizes 3/4&quot; - 10&quot;</td>
</tr>
<tr>
<td>(B) Dust Check Valve Backflow Preventer For low hazard applications.</td>
<td>Two independent check valves. Checks are removable for testing</td>
<td>Cross connections if there is a low potential health hazard and moderate flow requirements.</td>
<td>Post ground hydrants.</td>
<td>ASSE No. 1024 O Sizes 3/4&quot; &amp; 1&quot;</td>
</tr>
<tr>
<td>(A) Backflow Preventer with Intermediate Atmospheric vent for moderate hazard cross connections in small pipe sizes.</td>
<td>Two independent check valves with intermediate vacuum breaker and relief valve.</td>
<td>Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure.</td>
<td>Boilers (Small), Cooling Towers (Small), Dairy Equipment Residential</td>
<td>ASSE No. 1012 CSA B.64.3 Sizes 1/2&quot; &amp; 3/4&quot;</td>
</tr>
<tr>
<td>(B) Backflow Preventer for Carbonated Beverage Machine</td>
<td>Two independent check valves with a vent to atmosphere</td>
<td>On potable water distribution lines serving beverage-dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system.</td>
<td>Postmix carbonated beverage machine</td>
<td>ASSE 1022</td>
</tr>
<tr>
<td>(C) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker in small pipe sizes for moderate to low hazard.</td>
<td>Two independent check valves with intermediate vacuum breaker and relief valve.</td>
<td>Cross connection subject to back pressure or back siphonage if there is a moderate to low health hazard.</td>
<td>Laboratory Faucets and Pipe Lines, Barber Shop and Beauty Parlor Sinks</td>
<td>ASSE No. 1035 (N-LF9)</td>
</tr>
<tr>
<td>(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.</td>
<td>Single float and disc with large atmospheric port.</td>
<td>Cross connections not subject to back pressure or continuous pressure. Install at least 6&quot; above fixture rim. Protection against back siphonage only.</td>
<td>Process Tanks, Dishwashers, Soap Dispensers, Washing Machines</td>
<td>ASSE No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHP of U.S. CSA B.64.1.1 Sizes 1/4&quot; - 3&quot;</td>
</tr>
<tr>
<td>(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.</td>
<td>Spring loaded single float and disc with independent 1st check. Supplied with shut-off valves and ball type test cocks.</td>
<td>This valve is designed for installation in a continuous pressure potable water supply system 12&quot; above the overflow level of the system being supplied. Protection against back siphonage only.</td>
<td>Laboratory Equipment, Cooling Towers, Comm. Laundry Machines, Swimming Pools, Commercial Plating Tanks, Lg. Toilet Total &amp; Unrest Facilities, Degreasers, Photo Tanks, Livestock Water Systems, Lawn Sprinklers</td>
<td>ASSE No. 1020 CSA B.64.1.2 FCCCHP of U.S.C. Sizes 1/2&quot; - 2&quot;</td>
</tr>
<tr>
<td>(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.</td>
<td>Single check with atmospheric vacuum breaker vent.</td>
<td>Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.</td>
<td>Hose Bibs, Service Sinks, Hydrants</td>
<td>ASSE No. 1011 CSA B.64.2 Size 3/4&quot; Hose</td>
</tr>
</tbody>
</table>
### CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

<table>
<thead>
<tr>
<th>Type of Connection</th>
<th>Degree of Hazard</th>
<th>Acceptable Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Severe</td>
<td>Moderate</td>
</tr>
<tr>
<td>I. Connections subject to back pressure from:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Pumps, tanks, and lines handling:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Toxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Nontoxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>B. Boilers</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>1. With chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Without chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>C. Gravity due to obvious site conditions subject to:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Contamination by toxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Contamination by nontoxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>II. Water outlets and connections not subject to back pressure:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Connection to sewer or sewage pump</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>B. Outlet to receptacles containing toxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>C. Outlet to receptacles containing nontoxic substances</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>D. Outlet into domestic water tanks</td>
<td>EACH CASE TREATED SEPARATELY</td>
<td></td>
</tr>
<tr>
<td>E. Flush valve toilets</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>F. Flush valve urinals</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>G. Outlets with hose attachments subject to contamination from:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Toxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Nontoxic substance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>H. Outlets to recirculating cooling tower</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. With chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2. Without chemical additives</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.
(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to a building shall:
(a) Not be less than three-fourths (3/4) inch nominal pipe size; and
(b) be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.
(2) Except as provided in this subsection, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe may be placed in the same trench if:
(a) The bottom of the water service pipe at all points is at least eighteen (18) inches above the top of the sewer at its highest point;
(b) The water service pipe is placed on a solid shelf excavated at one (1) side of the common trench, and
(c) The number of joints in the water service pipe is kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.
(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.
(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.
(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified.
(b) An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.
2. Each branch, fitting, or valve shall be identified by the word "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve.
3. The identification marking shall not be concealed and shall be maintained by the owner.
(4) A backflow device or cross-connection control device shall be approved by the department.
(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system with-
out the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose on written approval of the plumbing official.

(8) Hose connections other than those intended for clothes washing machines, frost proof burial hydrants, and water heater drain valves shall be equipped with a vacuum breaker ASSE 1011 for areas not subject to freezing and a vacuum breaker ASSE 1012 for areas subject to freezing.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal or similar fixture.

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. (1) A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced.

(2) A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The office of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three (3), one-half (1/2) and one-half (3-1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to a fixture. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

<table>
<thead>
<tr>
<th>Fixture Branches</th>
<th>Nominal Pipe Size (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bath tubs</td>
<td>1/2</td>
</tr>
<tr>
<td>Combination sink and tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Cistern</td>
<td>1/2</td>
</tr>
<tr>
<td>Drinking fountain</td>
<td>1/2</td>
</tr>
<tr>
<td>Dishwasher (domestic)</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (res.)</td>
<td>1/2</td>
</tr>
<tr>
<td>Kitchen sink (com.)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Lavatory</td>
<td>1/2</td>
</tr>
<tr>
<td>Laundry tray</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks (service, slop)</td>
<td>1/2</td>
</tr>
<tr>
<td>Sinks flushing rim</td>
<td>3/4</td>
</tr>
<tr>
<td>Urinal (flush tank)</td>
<td>1/2</td>
</tr>
<tr>
<td>Urinal (direct flush type)</td>
<td>1/2 or 3/4 as required</td>
</tr>
<tr>
<td>Water closet (tank type)</td>
<td>1/2</td>
</tr>
<tr>
<td>Water closet (flush valve type)</td>
<td>1/2</td>
</tr>
</tbody>
</table>

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be as follows:

(a) Galvanized wrought iron;
(b) Galvanized steel;
(c) Brass;
(d) Types K, L, and M copper;
(e) Cast iron;
(f) Types R-K, R-L, and R-M brass tubing;
(g) Standard high frequency welded tubing produced and labeled as ASTM B-686-73;
(h) Fusion welded copper tubing produced and labeled as ASTM B-447-2002 [72] and ASTM B-251;
(i) [hi] DWV welded brass tubing produced and labeled as ASTM B-687-72 [7a];
(j) Seamless stainless steel tubing, Grade H, produced and labeled as ASTM A-268-05 [68];
(k) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold);
(l) Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-03 [69] or ASTM F-714;
(m) Cross-linked polyethylene (PEX) pipe produced and labeled as ASTM F-576 for cold water and ASTM F-677 for hot or cold water applications;
(n) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) pipe produced and labeled as ASTM F-1281;
(o) Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) pipe produced and labeled as ASTM F-1282;
(p) Copper tubing size PE produced and labeled as ASTM D-2737 for water service, if installed with compression couplings;
(q) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D-1785-92 [69];
(r) Chlorinated polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D-2845-92 [70];
(s) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D-2241-05 [84];
(t) Polybutylene (PB) plastic pipe produced and labeled as ASTM D-3309-96 [86] with brass or copper fitting; or
(u) Fusion welded Polypropylene Pipe Products which meet NSF Standards 61 and 14 and ASTM 2389. These products are approved for above-ground use only and using pipe sizes five-eighths (5/8) inch through six (6) inch; or
(v) Push-fit fittings which meet the ASSE Standard 1061. These systems are approved for above-ground use only using pipe sizes up to two (2) inches.

(2) A plastic pipe or fitting shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring.

(4) A polybutylene hot and cold water connector to a lavatory, sink, or water closet shall be produced and labeled as ASTM-D-3309-96 [86], and polybutylene plastic pipe shall be produced and labeled as ASTM 2662 for a cold water application.

(5) A fitting shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.
(6) Each joint in the water supply system shall be made of a screw, solder, or plastic joint. A cast iron water pipe joint may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to prevent expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If a chlorinated polyvinyl chloride [poly(vinyl chloride)] (CPVC) joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 pounds per square inch [psi] before backfilling. The applicable requirements of 815 KAR 20:060 and 815 KAR 20:073 shall be met.

(9) Joints between copper tubing and galvanized steel pipe. The joint between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 11. Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be a full port valve and be accessible from within the occupied space and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) A pressure or gravity tank shall have its supply line valved at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valve and a lawn sprinkler opening shall be valve. In residential construction, each fixture, except a bathtub or shower, shall be valve individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment. In residential dwellings, the shutoff valve shall be placed within three (3) feet of the water heater and be accessible from the accessible side of the water heater.

Section 13. Water Supply Protection. A concealed water pipe, storage tank, cistern, or other exposed pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

(a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater;

(b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer's recommendation; and

(c) Be of a type approved by the office in accordance with this administrative regulation and 815 KAR 20:020.

(2) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground.

(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

(3) A relief device shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution. The approval shall be obtained from this office prior to using the private water supply or source.

Section 16. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is protected by the manufacturer to 450 pounds per square inch [PSI];

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) pounds per square inch [PSI] above the maximum water pressure of the point of installation, if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the plumbing code and shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible:

<table>
<thead>
<tr>
<th>Sizing of Overflow Pipes for Water Supply Tanks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum capacity of water supply line to tank</td>
</tr>
<tr>
<td>Diameter of Overflow pipe (inches ID)</td>
</tr>
<tr>
<td>Maximum capacity of water supply line to tank</td>
</tr>
<tr>
<td>Diameter of overflow pipe (inches ID)</td>
</tr>
<tr>
<td>0-50 gpm                                   2  400-700 gpm  5</td>
</tr>
<tr>
<td>50-150 gpm                                 2 1/2  700-1000 gpm  6</td>
</tr>
<tr>
<td>150-200 gpm                                3  Over 1000 gpm  8</td>
</tr>
</tbody>
</table>

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed; and

(3) The distance from the outlet to the high water level shall be
measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit. The applicable requirements established in 815 KAR 20.070 shall be met.

Section 20. Fire Protection Systems. A fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home.

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a nser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the nser pipe shall be graded to divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.

(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20.070.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, In the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 EXT. 144, fax (502) 573-1037.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Reichert
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(b) The necessity of this administrative regulation: Requires hose connections, other than for washing machines, frost proof burial hydrants and water heater drain valves, to be equipped with a vacuum breaker listed ASSE 1011 for areas not subject to freezing and ASSE 1019 for areas subject to freezing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to adopt and put into effect a state plumbing code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Adds a vacuum breaker that protects the potable water system from contamination.

(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: Will add a requirement that hose connections shall be equipped with a vacuum breaker in certain situations.

(b) The necessity of the amendment to this administrative regulation: Protect the potable water system from contamination.

(c) How the amendment conforms to the content of the authorizing statutes: Requires the installation of vacuum breakers to further protect the potable water system.

(d) How the amendment will assist in the effective administration of the statutes: Provides protection of the potable water system from contamination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation will affect anyone that is using hydrants.

(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: Affected entities will have to use vacuum breakers when installing hydrants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The installation of the vacuum breaker will cost (5) dollars to the cost of a hydrant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The installation of the vacuum breaker will protect potable water from contamination thereby benefiting all end users.

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

(a) Initially: None

(b) On a continuing basis: None

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

(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: None.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(8) TIERING: Is tiering applied? Tiering is not applied. The installation is necessary on all systems. They cannot be distinguished by size or type.

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 regulation will have a minimal impact on anyone installing fire hydrants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 318.130.

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. This administrative regulatory amendment will have a minimal impact on entities installing hydrants as the vacuum breaker will add five ($5) dollars to the cost of each hydrant. There will be no impact on revenues.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to the Office of Housing, Buildings and Construction, Division of Plumbing, to administer this program. However, the addition of the vacuum breaker will add five ($5) dollars to the cost of each fire hydrant.

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(AMENDMENT)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 310.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office [department], after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping. This administrative regulation identifies the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

Section 1. Independent System. The drainage and plumbing system of new building and of new work installed in an existing building shall be separate and independent of other buildings except as otherwise provided [outlined] in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. An excavation made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) The sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2)(a) A house sewer shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot.

(b) A sewer shall have at least an eight-inch (8) inch cover.

(c) Sewer piping installed under property subject to vehicular traffic (e.g., a driveway, parking lot, or similar location) shall have at least a twenty-four (24) inch cover unless constructed of cast iron piping. If less than a twenty-four (24) inch cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on each side and the top.

(d) A sewer shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping.

(e) Each joint in cast iron and vitrified clay pipe shall be constructed to comply with 815 KAR 20:060, Sections 4 and 5 [made in conformity with the State Plumbing Code].

Section 6. New House Sewer Connections. A house sewer installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. A house sewer or combined sewer[beginning two (2) feet outside the foundation wall of a building] shall be made of the following:

1. Extra heavy cast iron pipe;
2. Service weight cast iron;
3. Aluminum;
4. Vitrified clay;
5. Concrete;
6. Coated composite PVC pipe produced and labeled ASTM F-1488;
7. PVC or ABS plastic pipe schedule 40 and 80;
8. Cellular core PVC produced and labeled as ASTM F-691;
9. Cellular core ABS produced and labeled as ASTM 628;
10. Truss pipe;
11. Extra heavy SDR 35 pipe;
12. Type PS 46, PVC in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82;
13. PVC ribbed pipe produced and labeled as ASTM 705, or
14. Polyethylene pipe produced and labeled as ASTM F 714, or
15. Other extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, coextruded composite PVC pipe produced and labeled ASTM F 1488, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as ASTM F 691, cellular core ABS produced and labeled as ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS 46, Polyvinyl Chloride (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82 or PVC ribbed pipe produced and labeled as ASTM 705, polyethylene pipe produced and labeled as ASTM F 714.]
and labeled as ASTM F-1488.

(2) A storm sewer in a size of ten (10) inches and larger shall be made in the following:

(a) [ ] Cast iron;
(b) [ ] Aluminum pipe;
(c) [ ] Schedule 40 ABS or PVC DWV pipe;
(d) [ ] SDR 35;
(e) [ ] Vitrified clay or concrete conforming to appropriate commercial specifications with approved joints; or
(f) Polyethylene pipe produced and labeled as ASTM F-714.

(3) Primary and secondary roof drains shall comply with the following requirements:

(a) Roof drains shall have strainers extending not less than four (4) inches above the surface of the roof immediately adjacent to the roof drain. Strainers shall have an available area not less than one and one-half (1 1/2) times the area of the conductor or leader to which the drain is connected;

(b) Roof drain strainers for use on sun decks, parking decks, and similar areas that are normally served and maintained may be of the flat surface type, installed level with the deck, with an available inlet area not less than two (2) times the area of the conductor or leader to which the drain is connected;

(c) Secondary (emergency) roof drains or scuppers shall be provided where the roof perimeter construction allows ponding if the primary roof drains become blocked;

(d) Separate systems required. Secondary roof drain systems shall have elements at point of discharge separate from the primary system. Discharge shall be above grade in a location which would normally be observed by the building occupants or maintenance personnel, and

(e) Primary and secondary drains must be sized in accordance with 815 KAR 20:130, Section 11, of the Kentucky State Plumbing Code.

Section 9. Change of Direction. A change in direction of a sewer shall be made only with:

(1) Long curves;
(2) Forty-five (45) degree wyes;
(3) Half wyes;
(4) Quarter, sixth, eighth or sixteenth bends; or
(5) Sanitary tees installed on their back or on their sides at an angle of not more than Forty-Five (45) degrees.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. A house sewer receiving a branch shall be sized in the same manner as a house drain. The house drains shall be installed in accordance with 815 KAR 20:050.

Section 11. Size of Storm Systems. The required size of a storm sewer shall be determined on the basis of the total drained area in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

<table>
<thead>
<tr>
<th>Diameter of pipe - inches</th>
<th>Maximum drained roof area square feet*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Slope 1/8 in. fall to 1 ft.</td>
</tr>
<tr>
<td>3</td>
<td>N/A</td>
</tr>
<tr>
<td>4</td>
<td>1,880</td>
</tr>
<tr>
<td>5</td>
<td>3,340</td>
</tr>
<tr>
<td>6</td>
<td>5,850</td>
</tr>
<tr>
<td>8</td>
<td>11,500</td>
</tr>
<tr>
<td>10</td>
<td>20,700</td>
</tr>
<tr>
<td>12</td>
<td>33,300</td>
</tr>
<tr>
<td>15</td>
<td>69,600</td>
</tr>
</tbody>
</table>

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

<table>
<thead>
<tr>
<th>Drained roof area in square feet</th>
<th>Up to 6</th>
<th>7 to 18</th>
<th>19 to 36</th>
<th>37 to 60</th>
<th>61 to 96</th>
<th>97 to 144</th>
<th>145 to 216</th>
<th>217 to 324</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 120</td>
<td>180</td>
<td>105</td>
<td>60</td>
<td>45</td>
<td>30</td>
<td>22</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>121 to 240</td>
<td>160</td>
<td>98</td>
<td>57</td>
<td>43</td>
<td>29</td>
<td>21</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>241 to 480</td>
<td>120</td>
<td>75</td>
<td>39</td>
<td>27</td>
<td>20</td>
<td>16</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>481 to 720</td>
<td>75</td>
<td>42</td>
<td>23</td>
<td>15</td>
<td>12</td>
<td>9</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>721 to 1,080</td>
<td>54</td>
<td>33</td>
<td>18</td>
<td>12</td>
<td>10</td>
<td>9</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>1,081 to 1,620</td>
<td>30</td>
<td>16</td>
<td>10</td>
<td>8</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>3</td>
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<tr>
<td>1,621 to 2,430</td>
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<td>11</td>
<td>8</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
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<td>2,431 to 3,645</td>
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<td>6.9</td>
<td>6.6</td>
<td>6.5</td>
<td>6.4</td>
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<td>5.9</td>
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<td>3,646 to 5,460</td>
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<td>5,461 to 8,190</td>
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<td>16,421 to 27,830</td>
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<td>0.0</td>
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<tr>
<td>40,946 to 61,520</td>
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<td>0.0</td>
<td>0.0</td>
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</tr>
<tr>
<td>Over 61,520</td>
<td>0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
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</tr>
</tbody>
</table>

Number of fixture units on sanitary system

<table>
<thead>
<tr>
<th>Drained roof area in square feet</th>
<th>325 to 486</th>
<th>487 to 732</th>
<th>733 to 1098</th>
<th>1,099 to 1644</th>
<th>1,645 to 2466</th>
<th>2,467 to 3702</th>
<th>3,703 to 5556</th>
<th>Over 5556</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 120</td>
<td>12</td>
<td>10.2</td>
<td>9.2</td>
<td>8.4</td>
<td>8.2</td>
<td>8.0</td>
<td>7.9</td>
<td>7.8</td>
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<tr>
<td>121 to 240</td>
<td>11.8</td>
<td>8.9</td>
<td>8.1</td>
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<td>7.8</td>
</tr>
<tr>
<td>241 to 480</td>
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<td>8.2</td>
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<td>481 to 720</td>
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<td>7.9</td>
<td>7.8</td>
<td>7.7</td>
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<tr>
<td>721 to 1,080</td>
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<td>8.3</td>
<td>8.0</td>
<td>7.8</td>
<td>7.8</td>
<td>7.7</td>
<td>7.6</td>
</tr>
<tr>
<td>1,081 to 1,620</td>
<td>9.8</td>
<td>8.4</td>
<td>8.1</td>
<td>7.9</td>
<td>7.7</td>
<td>7.7</td>
<td>7.6</td>
<td>7.5</td>
</tr>
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### VOLUME 33, NUMBER 10 – APRIL 1, 2007

<table>
<thead>
<tr>
<th></th>
<th>1,621 - 2,430</th>
<th>2,431 - 3,645</th>
<th>3,646 - 5,465</th>
<th>5,461 - 8,190</th>
<th>8,191 - 12,285</th>
<th>12,286 - 18,420</th>
<th>18,421 - 27,630</th>
<th>27,631 - 40,950</th>
<th>40,946 - 61,520</th>
<th>Over 61,520</th>
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</thead>
<tbody>
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<td>78</td>
<td>77</td>
<td>76</td>
<td>75</td>
<td>74</td>
<td>74</td>
<td>64</td>
<td>63</td>
<td>62</td>
</tr>
</tbody>
</table>

(1) For a building constructed after August 1, 1996, each plumbing fixture or opening connecting to a combination sanitary and storm sewer system shall either:

(a) Be installed above the elevation of the cover of the nearest manhole serving the main; or

(b) Discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding of the building.

Section 13. House Sewer in Undisturbed or Filled Ground. (1) A house sewer laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved gravelage.

(2) A house sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the office [department].

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

(4) A house sewer constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. (1) A storm sewer laid in undisturbed ground shall not require gravelage.

(2) A storm sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the office [department].

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In a public building in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by a device that complies with Sections 17 and 18 of this administrative regulation and discharged into the building (an approved artifice means and despatched into the house) sewer.

Section 16. Drainage Below Sewer Level (Residential). (1) In a home where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump appropriate for that installation.

(2) The sump pit shall:

(a) Be gas and air tight; and

(b) Be constructed of:

1. [either] Pourled or precast concrete;

2. [either] Approved fiberglass; or

3. Polyethylene material [with a tight-fitting cover].

(3) The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray.

(4) The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade.

(5) The sump pit shall be provided with a tight-fitting concrete cover.

(6) On the outside of the building, this waste pipe shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. A subsoil drain shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or an equally efficient method. **Sewage surcharge shall be a minimum twenty-four (24) inches in diameter and no less than twenty-four (24) inches in depth. Systems which rely solely on a pump shall be equipped with both an audible and visual alarm to be placed within the occupied space. The sump shall automatically discharge.**

Section 18. Ejectors, Vented. (1) A sewage ejector serving a residential installation shall be vented with a two (2) inch vent.

(2) Except as provided in paragraph (b) of this subsection, an ejector serving a commercial or industrial installation shall be vented with a three (3) inch vent.

(a) If a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be vented with a two (2) inch vent back to the three (3) inch vent stack. The ejector vent shall not be smaller than that recommended by the manufacturer of the pump.

(b) A portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined sanitary and storm sewer, except for a system designed otherwise by a licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, and Air Tanks. (1) A motor, air compressor, or air tank shall be located where it is open for inspection and repair at all times.

(2) An air tank shall be proportioned to furnish sufficient air at suitably pressure to the ejector to completely empty the sump or storage tank with the compressor not operating.

(3) The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If a subsol catch basin is installed below the sewer level, an approved automatic ejector shall be used. The ejector or a device raising subsol water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas, Roofs, and Traps. (1) A roof, paved area, court, or courtyard shall be drained into one (1) of the following:

(a) A storm water system;

(b) A combined sewage system; or

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) These areas shall not be drained into a sewer intended for sewage only.

(3) Traps.

(a) If a drain is connected to a combined sewage system, it shall be trapped.

(b) If a roof leader, conductor, or gutter opening is located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) A trap shall be set below the frost line or on the inside of the building.

(d) If a drain is not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall
not be less size than the following:

<table>
<thead>
<tr>
<th>Area of Roof (In Square Feet)</th>
<th>Leader, Diameter (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 90</td>
<td>1 1/2</td>
</tr>
<tr>
<td>91 to 270</td>
<td>2</td>
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<tr>
<td>271 to 810</td>
<td>3</td>
</tr>
<tr>
<td>811 to 1,600</td>
<td>3 1/2</td>
</tr>
<tr>
<td>1,601 to 5,500</td>
<td>4</td>
</tr>
<tr>
<td>5,501 to 9,200</td>
<td>5</td>
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</table>

Section 23. Inside Conductors or Roof Leaders. (1) If a conductor or roof leader is placed within the walls of a building, or in an interior court or ventilating pipe shaft, it shall be constructed of:
(a) Cast iron pipe;
(b) Galvanized wrought iron;
(c) Galvanized steel;
(d) Copper;
(e) Aluminum;
(f) Schedule 40 ABS/PVC DMV pipe; or
(g) Reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red and silver-thread).

(1) The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. (1) If an outside sheet metal conductor or downspout is connected to a house drain, it shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line.
(2) If the downspout runs along a public driveway without a sidewalk, it shall be placed in a niche in the walk, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. (1) A conductor pipe shall not be used as a soil, waste or vent pipe.
(2) A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. An overflow pipe from a cistern, supply tank, expansion tank, or drip pan shall connect indirectly with a house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains. Subsoil Drains, Below Sewer Level. A subsoil drain shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. If the local health department or sanitary sewer system board, plant, district or treatment plant owner prohibits the discharge of a basement floor drain or other apparatus into the sanitary sewer system, an existing basement floor drain or sump pump apparatus shall comply with the new construction requirements of this administrative regulation and be inspected prior to the approval of a connection for a new sewer line.

Public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intention to attend. If no notification of intention 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 April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Route 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Reichert

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping.
(b) The necessity of this administrative regulation: Provides the methods of installation of house sewers and storm water piping.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to include the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 318.130 requires the Office to promulgate and amend the plumbing code to ensure use of modern materials and methods to promote the integrity of plumbing systems and safety of consumers.

(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: Will avoid confusion between the Kentucky Building Code and the Kentucky Plumbing Code. It will add a minimum standard for sewage sumps which will provide additional protection for the public.
(b) The necessity of the amendment to this administrative regulation: To bring into compliance the Kentucky Plumbing Code and the Kentucky Building Code and to provide a minimum standard for sewage sumps.
(c) How the amendment conforms to the content of the authorizing statute: KRS 318.130 allows for periodic amendment of the Kentucky State Plumbing Code. These changes were recommended by the Plumbing Code Committee and approved by the Board of Housing, Buildings and Construction to provide greater protection to consumers.
(d) How the amendment will assist in the effective administration of the statute: This amendment amends the Kentucky State Plumbing Code to allow greater protection to consumers who utilize sump pumps and to strengthen requirements for roof drainage systems.
(e) How the amendment does not duplicate or conflict with any other administrative regulations or laws: This amendment does not duplicate or conflict with any other administrative regulations or laws.
(f) How the amendment affects waived statutory provisions: This amendment does not affect waived statutory provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those businesses that sell the products and plumbers.

(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: Plumbers will be impacted only to the extent that the building code requirements relating to roof drainage systems are being put into the plumbing code for ease of reference. Also, Improved sump pumps are required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The sump pump requirement could add marginally to the cost of those products versus what is sometimes used now. The roof drainage requirements already exist, but are being added to the plumbing code for ease of reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits from the regulation is that consumers using sump pumps will be afforded greater protection and specifically listing forth requirements for roof drainage systems will ensure better code compliance.

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

(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

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 Housing, Buildings and Construction, Division of Plumbing 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. The statutory authority for this administrative regulation is found in KRS 318.130.

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. This administrative regulatory amendment will have no impact on expenditures or revenues.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to minimum standards for the specified parts and products.

(d) How much will it cost to administer this program for subsequent years? There will also 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:
closed, except the highest opening and the system shall be filled with water to the point of overflow.

(c) If the system is tested in sections, each opening shall be tightly plugged, except the highest opening and it shall be tested with not less than a ten (10) foot head of water. In testing successive sections, at least the upper ten (10) feet of the preceding section shall be retested.

(3) In lieu of a water test, an air pressure test may be used by attaching an air compressor or test apparatus to any suitable opening. All other inlets and outlets to the system shall be closed, forcing air into the system until there is a uniform pressure of five (5) pounds per square inch (PSI). The pressure shall be maintained for fifteen (15) minutes.

(4) The final air test shall test the entire soil or waste and vent system including the fixture and appurtenances by connecting an air machine to any suitable opening or outlet and applying air pressure equivalent to a one (1) inch water column. It shall be maintained for at least a fifteen (15) minute period. If there are no leaks or forcing of trap seals as may be indicated by the functioning of a drum, float, or water column, the system shall be deemed airtight.

(5) A garage drainage system shall be tested in the same manner as the soil, waste and vent system.

(6) A [The] house sewer shall be tested by [either] a water, air, or [a] smoke test. After the sewer trench has been filled with at least two (2) feet of earth cover, it shall be retested. A four (4) inch test tee or Y connection shall be provided at the property line for testing. The distance between cleanouts in sewers shall not exceed one hundred fifty (150) feet.

(7) A building sewer not drained by gravity shall have a minimum of twenty-four (24) inches of cover and shall be tested with five (5) pounds per square inch for a period of fifteen (15) minutes.

Section 5. Required-[Order-of] Tests. Tests shall be made separately or as follows:

(1) The house sewer and its branches from the property line to the house drain;

(2) The house drain including its branches;

(3) The soil, waste, and vent system;

(4) [as well as] inside main water conductors; and

(5) [The] Final inspection and air test which shall include the complete plumbing system as required by Section 4(2) of this administrative regulation, exclusive of the house sewer.

Section 6. Tests of Alterations, Extensions or Repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste or vent piping shall be inspected and tested as required by Section 9(2) of this administrative regulation.

Section 7. Covering of Work. The plumbing system shall not be covered until it has been inspected, tested, and approved.

Section 8. Uncovering of Work. If any part of a plumbing system is covered or concealed before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required.

Section 9. Defective Work. If an inspection or a test indicates defective work or material, it shall be replaced and the inspection and the test repeated.

Section 10. Testing Defective Plumbing. An air test shall be used in testing the condition of a plumbing system if there is reason to believe it has become defective.

Section 11. Inspections and Tests Not Required for Exhibition Purposes. Tests and inspections shall not be required where a plumbing system shall be used for exhibition purposes and is not directly connected to a sewerage system.

Section 12. Inspections and Tests for the Replacement of Old Plumbing Fixtures. Inspections and tests shall not be required if:

(1) Old plumbing fixtures are replaced with new fixtures;

(2) Faucets or valves are replaced; or

(3) Leaks are repaired.

Section 13. Certificates of Approval. Upon the satisfactory completion and final test of the plumbing system, a certificate of approval shall be issued by the office [department].

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRUSS, Deputy Secretary
For TEREIA S. HILL, Secretary
APPROVED BY AGENCY: March 12, 2006
FILED WITH LRC: March 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments can be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0934 ext 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements for the tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the State Plumbing Code.

(b) The necessity of this administrative regulation: Sets the standards and methods for the testing and inspections of systems in order to comply with the State Plumbing Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Office of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to test and inspect plumbing systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes establish the State Plumbing Code, the goal of which is to provide safe and efficient plumbing systems. Testing and inspections ensure safety and efficiency, including the changes regarding testing and depth for force main sewers.

(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: Will set a testing and depth for force main sewers.

(b) The necessity of the amendment to this administrative regulation: Reflects approved changes in plumbing code.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 authorizes the Office to amend the plumbing code and these changes were previously approved by the Plumbing Code Committee and the Office of Housing, Buildings and Construction.

(d) How the amendment will assist in the effective administration of the statutes: Testing and depth requirements help ensure safe and efficient systems in conformity with the most modern techniques and materials.

(c) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administr-
tive regulation: Those businesses that sell the products and plumbers.

(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 comply with this administrative regulation or amendment. The regulation relates solely to the testing of systems. It impacts regulated entities to the extent that it sets forth tests to be conducted in connection with force main sewers.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The benefit is to ensure proper functioning of force main sewers.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

TIERING: Is tiering applied? Tiering is not applied. This amendment sets a testing and depth for all force main sewers. Differences between such sewers do not necessitate different tests.

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 Housing, Buildings and Construction, Division of Plumbing, 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. The statutory authority for this administrative regulation is found in KRS 318.130.

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 administrative regulatory amendment will have no impact on expenditures or revenues.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply sets standards and methods for testing and inspection of plumbing systems.

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

Note: Specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
2. A passport-sized color photograph of the applicant;
3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and
4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (Application and Renewal Fees) (1) The application and renewal fees shall be:
   (a) $200 for an electrical contractor's license;
   (b) $100 for a master electrician's license; or
   (c) Fifty (50) dollars for an electrician's license.
(2) Application, renewal, reinstatement, and late fees shall not be refundable.
(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee.
(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and no late fee shall be assessed.
(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.
(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.
(2) Verification shall be submitted in the form of:
   (a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
   (b) Copies of business licenses issued by a county or municipal government which did not issue electrical contractor's, master electrician's or electrician's licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker,
   (c) A sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:
      1. An electrical workers union;
      2. A certified electrical inspector; or
      3. An employer which employed the applicant as an electrician or a master electrician; or
   (3) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) Applicants for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. Passing scores shall be valid for a period of three (3) years.
(2) For electrical contractor's licenses, applicants that are business entities shall designate a person to take the examination on behalf of the applicant. The designee shall be:
   (a) An owner of the applicant;
   (b) An officer of the applicant;
   (c) A director of the applicant; or
   (d) A full-time employee of the applicant.
(3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:
   1. Has passed the examination; or
   2. Successfully passes the examination within thirty (30) days.
(4) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.
(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Executive Director of the Office of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.
(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Executive Director of the Office of Housing, Buildings and Construction.
(3) The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Executive Director, who may adopt it, amend it or substitute his or her own decision based upon the evidence.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an insurer authorized to do business in Kentucky and named the Office of Housing, Buildings and Construction. Electrical Licenses, as the certificate holder [authorized Kentucky insurer or other insurer certified by the Kentucky Office of Insurance].
(2) The applicant shall provide proof of workers' compensation insurance by providing:
   (a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or
   (b) An notarized statement (letter-certifying) that the applicant is not required to obtain workers' compensation coverage and the reason why such coverage is not required.
(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Office of Housing, Buildings and Construction if:
   (a) A policy is cancelled, terminated, or not renewed; or
   (b) The policy limits are lowered.
(4) Electrical contractors shall advise the Office of Housing, Buildings and Construction of any:
   (a) Change in their insurance coverage, including cancellation or termination of any policy;
   (b) Change in the insurer providing the coverage; or
   (c) Changed circumstances which require the contractor to obtain coverage.[change in their insurance coverage including cancellation or termination of any policy or any change in the insurer providing the coverage.]

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the renewal month shall be the month the license was issued.
(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata initial license fee to reflect the actual term of the initial license.
(3) Licensee shall apply for renewal of their license(s) on Form SF-EC-5.

Section 9. Inactive License Status. (1) A licensee may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.
(2) An electrical contractor license in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.
(3) Certified electrical inspectors may be licensed as electrical contractors, master electrician or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.
(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:


(b) Form SFM-EC-3, "Master Electrician's and Electrician's License Application," [February, 2007 [May-2006] edition]; and

(c) Form SFM-EC-4, "Reciprocity Electrical License Application," [February, 2007 [May-2006] edtion]; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Licensing [Section], 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LEGAL: March 14, 2007
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David L. Reichert
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the provisions of 227A.060.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as required by KRS 227A.060.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation conforms to the statute by establishing the standards and procedures that are to be followed for the licensing of electrical contractors, electricians and master electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.

(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 clarify when the late fee will be applied, update the applications, and contains some clean-up language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate the confusion of when to apply a late fee, and to update forms and clean up language.

(c) How the amendment conforms to the content of the authorizing statute: KRS 227A.040 requires the Office to promulgate administrative regulations to create procedures governing the issuance of licenses to electrical contractors, master electricians and electricians, including the fees. This amendment satisfies those statutory obligations.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist the office by clarifying when to apply the late fee, and it updates forms and cleans up some language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every business or individual currently holding or seeking to hold a license as a contractor, electrician or master electrician.

(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 be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Licensed electricians will be impacted by having updated application forms, clarified language that fees are nonrefundable and the provision that a renewal application timely mailed will not incur a late fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). None. Regulation clarifies existing language.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3); Licensees are benefited by the use of the "mail box rule", which will result in the assessment of fewer late fees.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: No cost to Implement.

(b) On a continuing basis: No cost to Implement.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all licensees should be subject to the same standards in this context. Variations as to size or location of the applicant should not vary the applicable 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 Kentucky Office of Housing, Buildings and Construction, Electrical Licensing Section, 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. The statutory authority for this administrative regulation...
is found in KRS 227A.040(1), KRS 227A.040(8), KRS 227A.060 and KRS 227A.100(9).

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 administrative regulatory amendment will slightly reduce revenues. Fewer late fees will be imposed.

(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 regulatory amendment will not generate revenue 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? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as the administrative regulatory amendment simply updates forms, clarifies when a late fee should be applied and clarifies language already in the regulation.

(d) How much will it cost to administer this program for subsequent years? There will also 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:

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


RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a), 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a) requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(6) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, personal care beds, and Alzheimer nursing home beds.

(10) "Nonsubstantive review" is defined by KRS 216B.015(17).

(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(12) "Office or clinic" means the physical location at which health care services are provided.

(13) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(14) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(15) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(16) "Proposed service area" means the geographic area the applicant proposes to serve.

(17) "Public Information channels" means the Division of Communications in the Cabinet for Health and Family Services.

(18) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(19) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership which an accredited medical school operated within the Commonwealth of Kentucky;

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraphs (a) or (b) of this subsection.

(20) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (Forms A, B, or C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Formal or nonsubstantive review of an application for a
certain certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:
(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or
(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:
(a) Increase the scope of the project;
(b) Increase the amount of the capital expenditure;
(c) Expand the size of the proposed service area;
(d) Change the location of the health facility or health service; or
(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:
(a) Decrease the scope of the project;
(b) Decrease the amount of the capital expenditure; or
(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:
(a) The facility has not yet been licensed;
(b) The location is within the county listed on the certificate of need application; and
(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one year of the date of filing, the letter of intent shall expire and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 2168.095(3)(f) and Section 8 of this administrative regulation shall be as follows:
(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment and new technological developments shall be given on the third Thursday of the following months:
1. January;
2. July.
(b) Public notice for residential hospice facilities, hospice agencies and home health agencies shall be given on the third Thursday of the following months:
1. February;
2. August.
(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:
1. March;
2. September.
(d) Public notice for day health care programs, prescribed pediatric extended care facilities and personal care beds shall be given on the third Thursday of the following months:
1. April;
2. October.

(e) Public notice for acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, ambulatory care centers, freestanding ambulatory surgical centers, primary care centers with outpatient diagnostic and surgical services, and birthing centers shall be given on the third Thursday of the following months:
1. May; and
2. November.
(f) Public notice for long-term care beds and acute care hospitals including all other State Health Plan-covered services to be provided within the proposed acute care hospital shall be given on the third Thursday of November.
(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (FRTF) shall be given on the third Thursday of the following months:
1. June; and
2. December.
(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be the most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth in Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 2168.095(3)(f) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:
(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 2168.095(3)(a) through (e) shall be mailed to affected per-
sons.

(5) A determination that an application is complete shall:
(a) Indicate that the applicant has minimally responded to the
necessary items on the application;
(b) Not be determinative of the accuracy of, or weight to be
given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for
approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the
cabinet shall:
(a) Provide the applicant with written notice of the information
necessary to complete the application; and
(b) Notify the applicant that the cabinet shall not deem the
application complete unless within fifteen (15) days of the date of
the cabinet's request for additional information:
1. The applicant submits the information necessary to complete
the application by the date specified in the request; or
2. The applicant requests in writing that the cabinet review its
application as submitted.

(8) If, upon receipt of the additional information requested,
the cabinet finds that the application for formal review is complete,
the cabinet shall:
(a) Notify the applicant in writing that:
1. The application for formal review has been deemed complete;
2. Review of the application for the approval or denial of a
certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need
newsletter that review of the application for approval or denial of a
certificate of need has begun.

(9) If, upon receipt of the additional information requested,
the cabinet finds that an application for nonsubstantive review is
complete, the cabinet shall:
(a) Notify the applicant in writing that:
1. The application has been deemed complete;
2. Review of the application for the approval or denial of a
certificate of need shall begin upon public notice being given; and
3. A decision to grant or deny nonsubstantive review status
shall be made within ten (10) days of the date that the application
was deemed complete; and

(b) Give public notice in the next appropriate certificate of need
newsletter for applications granted nonsubstantive review status
under Section 8 of this administrative regulation, that status has
been granted and that review of the application for approval or
denial of a certificate of need has begun. Public notice for
applications granted nonsubstantive review status according to KRS
216.0595(3)(a) through (e) shall be mailed to affected persons.

(11) Once an application has been deemed complete, an
applicant shall not submit additional information to be made part
of the public record unless:
(a) The information is introduced at a hearing; or
(b) In the case of a deferred application, the additional
information is submitted at least twenty (20) days prior to the date that
the deferred application is placed on public notice.

(12) A determination that an application is complete shall:
(a) Indicate that the application is sufficiently complete to be
reviewed for approval or disapproval;
(b) Not be determinative of the accuracy of, or weight to be
given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for
approval.

Section 7. Considerations for Formal Review. In determining
whether to approve or deny a certificate of need, the cabinet's
review of applications under formal review shall be limited to the
following considerations:
(1) Consistency with plans.
(2) To be approved, a proposal shall be consistent with the
State Health Plan established in KRS 5.020.
(3) In determining whether an application is consistent with the
State Health Plan, the cabinet shall apply the latest inventories and
need analysis figures maintained by the cabinet and the version of
the State Health Plan in effect at the time of the cabinet's decision.
(4) An application seeking to reestablish a licensed healthcare,
facility, or service, which was provided at the healthcare facility and
which was voluntarily discontinued by the applicant, shall be consi-
cidered consistent with the State Health Plan under the following
circumstances:
1. The termination or voluntary closure of the former healthcare
service or facility:
   a. Was not the result of an order or directive by the cabinet,
governmental agency, judicial body, or other regulatory authority;
   b. Did not occur during or after an investigation by the cabinet,
governmental agency, or other regulatory authority;
   c. Did occur while the facility was in substantial compliance
with applicable administrative regulations and was otherwise eligi-
ble for re licensure;
   d. Was not an express condition of any subsequent Certificate
of Need approval; and
   e. Did not occur less than twenty-four (24) months prior to the
submission of the application to reestablish;
2. The proposed healthcare service shall be provided within
the same service area as the former healthcare service;
3. The proposed healthcare facility shall be located within the
same county as the former healthcare facility and at a single loca-
tion; and
4. The application shall not seek to reestablish any type of bed
utilized in the care and treatment of patients for more than twenty-
three (23) consecutive hours.
(2) Need. The cabinet shall determine:
(a) If the applicant has identified a need for the proposal in the
geographic area defined in the application; and
(b) If the applicant has demonstrated that it is able to meet the
need identified in the geographic area defined in the application.
(3) Accessibility. The cabinet shall determine if the health facil-
ity or health service proposed in the application will be accessible
in terms of timeliness, amount, duration, and personnel sufficient to
provide the services proposed.
(4) Interrelationships and linkages. The cabinet shall deter-
mine:
(a) If the proposal shall serve to accomplish appropriate and
efficient linkages with other services, facilities, and elements of the
health care system in the region and state; and
(b) If the proposal is accompanied by assurance of effort to
achieve comprehensive care, proper utilization of services, and
efficient functioning of the health care system.
(5) Costs, economic feasibility, and resource availability. The
cabinet shall determine:
(a) If it is economically feasible for the applicant to implement
and operate the proposal; and
(b) If applicable, if the cost of alternative ways of meeting the
need identified in the geographic area defined in the application
would be more effective and economical use of resources.
(6) Quality of services. The cabinet shall determine:
(a) If the applicant is prepared to and capable of undertaking
and carrying out the responsibilities involved in the proposal in a
manner consistent with appropriate standards and requirements
established by the cabinet; and
(b) Whether the applicant has the ability to comply with appli-
cable licensure requirements. The fact that there is not an applica-
table licensure category shall not constitute grounds for disapproving
an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant
nonsubstantive review status to applications to change the location
of a proposed health facility or to relocate a licensed health facility
only if:
(a) There is no substantial change in health services or bed
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capacity; and
2. The change of location or relocation is within the same county; or
(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility.
(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e) pursuant to KRS 216B.095(f), the Division of Certificate of Need may grant nonsubstantive review status to an application for which a certificate of need is required if:
(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;
(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;
(c) The proposal involves an application to relocate nursing facility beds from one long term care facility to another long term care facility and the requirements established in this paragraph are met.
1. If the relocation takes place within the same county, the following restrictions shall apply:
   a. The application shall be filed on or before September 28, 2005; and
   b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.
2. If the relocation is to be from one county to another county, the following restrictions shall apply:
   a. The letter of intent shall be filed no later than August 29, 2005 and the application shall be filed no later than September 28, 2005;
   b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;
   c. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent according to the latest published version of the Kentucky Annual Long Term Care Services Report;
   d. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy rate was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent) or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent according to the latest published version of the Kentucky Annual Long Term Care Services Report; and
   e. A long term care facility shall not sell or acquire more than ten (10) of its licensed nursing facility beds;
(d) The proposal involves an application by an existing licensed hospital to add to its existing acute care bed inventory, and the requirements established in this paragraph are met.
   1. The letter of intent shall be filed no later than August 27, 2007, and the application shall be filed no later than September 26, 2007;
   2. The application proposes to increase the hospital's existing licensed acute care bed inventory by no more than twenty (20) percent;
3. The hospital's acute non-psychiatric inpatient occupancy rate was seventy (70) percent or greater (rounded up to the next whole number) according to each of the two (2) most recently published versions of the Kentucky Annual Hospital Utilization and Statistics Report;
4. The hospital documents that during each of the two (2) previous calendar years at least twenty (20) percent of its acute nonpsychiatric inpatient hospital admissions originated from counties not included in the hospital's area development district, as created and established pursuant to KHS 147A.050. (The proposal involves an application to establish no more than thirty (30) nursing facility beds at a dual licensed pediatric facility as defined in 007 KAR 1-032, Section 1.)
(e)1. The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and:
   a. There is no increase in the total number of licensed acute care beds in that area development district; and
   b. The hospital from which the beds are relocated delicens those beds; and
2. If neonatal Level II beds are relocated or transferred pursuant to this subsection:
   a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;
   b. A minimum of four (4) beds shall be relocated; and
   c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;
(f) The proposal involves an application by an existing licensed hospital to:
1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;
2. Convert and implement the beds on-site at the hospital's existing licensed facility; and
3. Delicense the same number of psychiatric or chemical dependency beds that are dedicated to:
(g) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:
1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds,
2. Implement the beds on-site at the existing licensed hospital; and
3. Delicense the same number of converted beds
(3) If an application is denied nonsubstantive review status by the Division of Certificate of Need, the application shall automatically be placed in the formal review process.
(4) If an application is granted nonsubstantive review status by the Division of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.
(5) If an application is granted nonsubstantive review status by the Division of Certificate of Need, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice. The Division of Certificate of Need shall conduct a substantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all substantive review hearings. Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.
(6) If an application for certificate of need is granted nonsubstantive review status by the Division of Certificate of Need, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Division of Certificate of Need shall not be reviewed for consistency with the State Health Plan.
(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the Division of Certificate of Need if:
(a) The application does not propose a capital expenditure; or
(b) The application does propose a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.
(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:
(a) The cabinet finds that the applicant is not entitled to non-
substantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Division of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;
(b) Request that the application be placed in the next cycle of the formal review process; or
(c) Seek judicial review pursuant to KRS 216B 115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;
(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;
(c) Notice of appeal rights; and
(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and
(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be reconsidered for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.

(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review, within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or
(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the services necessary to alleviate the emergency or
(b) The Division of Certificate of Need is notified in writing within five (5) days of the commencement of the provision of the services necessary to alleviate the emergency.

(c) The Division of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Division of Certificate of Need shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency which shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the services;
2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and
3. Proof that:
   a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or
   b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;
   c. The steps taken to alleviate the emergency;
   d. The location or geographic area where the emergency service is being provided; and
   e. The expected duration of the emergency.

(3) The Division of Certificate of Need may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency ceases to exist; or
(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

(6) Once a Certificate of Need is issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the Division of Certificate of Need and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.

(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division of Certificate of Need that it is no longer providing the service and the Division of Certificate of Need shall...
Need shall notify the Office of Inspector General that the emergency no longer exists.

(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the Division of Certificate of Need.

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Division of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filing of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) Failure to file documents in accordance with the schedule and manner provided in subsections (1) and (2) of this section shall result in the materials being returned to the sender and the certificate shall not take additional action until the material is properly resubmitted.

(4) The Division of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of any nonsubstantive review hearing and not less than ten (10) business days prior to the date of any other hearing;

(b) Published in the Certificate of Need newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Division of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any motion, including a motion for summary judgment or a motion to dismiss, which, if sustained, would eliminate the need for a hearing, shall be filed and delivered to all opposing parties at least three (3) days prior to any nonsubstantive review hearing and at least three (3) business days prior to any other hearing. This shall not preclude a party from making a dispositive motion at the hearing based on facts or issues arising at or during the hearing.

(6) Except as specified in Section 18 of this administrative regulation, any party that files any materials or items, including pleadings, with the Division of Certificate of Need, shall also deliver a copy to all opposing parties by personal service, facsimile, or electronic mail as well as by mail.

(7) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or
c. Formulate and submit stipulations to facts, laws, and other matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or
4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) business days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and deliver copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(9) (a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3; and

2. Either:

a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (8) of this section.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(11) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing, including determining the manner or form in which evidence may be presented as well as imposing reasonable and appropriate limits on the time allotted to each party to present their
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(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:
(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed; and
(b) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer. The hearing officer shall prohibit and exclude evidence or information which is irrelevant, immaterial, or unduly repetitious.

(15) Testimony presented at the hearing shall be done so under oath or by affirmation. Witnesses shall be examined under oath or affirmation.

(16) Each party shall have the opportunity to present its case in the following manner:
(a) Make opening statements, with each party limited to twenty (20) minutes each;
(b) Introduce direct testimony of relevant, pertinent witnesses, with all testimony also submitted in writing;
(c) Offer documentary evidence into the record;
(d) Make closing statements, with each party limited to twenty (20) minutes each; and
(e) Conduct reasonable cross-examination of opposing witnesses on:
1. Matters covered in direct examination; and
2. Other matters which the hearing officer determines are relevant, pertinent, and productive in resolving the disputed issues.

(17) The direct testimony of witnesses shall be presented in the following manner:
(a) In writing;
(b) In the form of questions and answers or a narrative statement;
(c) Sworn or attested to under the penalty of perjury; and
(d) With all individuals available at the time of the hearing for purposes of cross-examination.

(18) At least five (5) days prior to any nonsubstantive hearing, the direct testimony of all witnesses shall be filed and delivered to all parties. At least three (3) days prior to a nonsubstantive hearing, objections to any portion of the proposed direct testimony shall be filed and delivered to all parties.

(19) (a) At least seven (7) business days prior to any other type of hearing, the party that bears the burden of proof shall file and deliver to opposing parties the written direct testimony of all witnesses they intend to introduce at the hearing.

(b) At least four (4) business days prior to the hearing, the opposing parties shall file and deliver the written direct testimony of all witnesses they intend to introduce at the hearing as well as objections to any portion of the proposed direct testimony previously filed.

(c) At least two (2) business days prior to the hearing, the party that bears the burden of proof shall file and deliver objections to any portion of the proposed direct testimony submitted by the other parties.

(20) Failure to make available an individual for purposes of cross-examination shall result in that party not being permitted to offer any written direct testimony from that individual.

(21) The hearing officer may accept documentary evidence in the form of copies of excerpts if:
(a) The original is not readily available,
(b) Upon request, parties are given an opportunity to compare the copy with the original; and
(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and delivered to other parties at least:
1. Five (5) days prior to a nonsubstantive hearing; or
2. Seven (7) business days prior to any other hearing.

(22) Other than the Certificate of Need application and other items submitted, a document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(23) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(24) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(25) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.090.

(26) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

(27) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:
(a) Approval or disapproval of an application for a certificate of need;
(b) An advisory opinion entered after a public hearing;
(c) Revocation of a certificate of need; or
(d) A show cause hearing conducted in accordance with Section 18 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by the requestor on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted a hearing shall be held by the cabinet in accordance with the applicable provisions of Section 16 or 18 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration.

(7) If reconsideration is not granted the hearing shall proceed on the evidence submitted to the hearing officer on reconsideration or the hearing officer shall notify the parties of the reasons for the denial.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to 42 U.S.C. § 1396a(e) (as determined by Kentucky law), in order to determine if a person has established if is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.090 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:
(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or
(b) Is subject to the penalties provided by KRS 216B.090 for specific violations of the provisions of KRS Chapter 216B.
(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise, including a possible violation of the terms and conditions which are a part of a certificate of need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) Except as provided by paragraph (b) or (c) of this subsection, if it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(3)(a), the hearing officer shall base his or her findings of fact and proposed decision on whether the evidence has established the following:

1. The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the health arts or group of physician, dentists, or other practitioners of the healing arts herein referred to as "physician" claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption is responsible for all decisions regarding the care and treatment provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic which was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;

b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a)(1), 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center;

2.a. The office was established and in operation prior to January 31, 2006;

b. The office does not provide any services or equipment covered by the State Health Plan; or

c. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegations; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need newsletter if applicable.

(13) At least seven (7) business days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, (Form #3);

(b) Witness List, (Form #4); and

(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall render findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue;

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subse-
quent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or $100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than $500,000; and

(b) Twenty (20) percent of the capital expenditure authorized on the certificate of need is $500,000 to $4,999,999,

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects if the capital expenditure authorized on the certificate of need is $5,000,000 to $24,999,999;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, if the capital expenditure authorized on the certificate of need is $25,000,000 to $49,999,999; and

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000, if the capital expenditure authorized on the certificate of need is $50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, if sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General; and

(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that:

(a) The failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (4) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.066.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment: plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; or

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services; or

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and

4. Enforceable contract with a construction contractor; or

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement setting forth the reasons why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:
(a) The first progress report shall include:
1. A copy of the deed or lease of land for projects requiring acquisition of real property; and
2. Evidence that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.
(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:
1. For conversion of beds projects, documentation that the beds
in the project are licensed; or
2. For construction projects:
   a. Schedule for project completion with projected dates,
   b. Documentation of final financing,
   c. Documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and
   d. Enforceable construction contract.
(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that
construction or renovation is progressing according to the schedule
for project completion.
(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that
the project has been appropriately licensed and approved for occu-
pancy by the Office of Inspector General.
(19) If the cabinet or its designee may accept no more than three
(3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this
section.
(20) If the project involves a capital expenditure, a final cost
breakdown shall be included in the final progress report.
(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license
while it is conducting its annual licensure inspection, it shall refer
this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders
may be subject to biennial review to determine if they are in com-
pare with the terms as listed on their certificate of need.
(2) Biennial review may be conducted within sixty (60) days of
the second anniversary of the final progress report and at twenty-
four (24) month intervals thereafter.
(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review,
including the following:
(a) When the biennial review shall be initiated;
(b) Request for information necessary for the review to which
the cabinet does not have access to;
(c) A deadline for response to the request for information.
(4) If the cabinet finds that any of the terms and conditions of a
certificate of need approval and license have been violated, the
violation of, and any sanctions for, this violation shall be conducted in accordance with Section 18(4) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need
on its own initiative or upon request from any person.
(2) Requests for advisory opinions shall be filed with the cabi-
net and shall be accompanied by the Request for Advisory Opin-
on, Form #7.
(3) In rendering an advisory opinion, a proposal shall be con-
sidered to constitute an improvement within the definition of a non-
clinically related expenditure exempt from review if the proposed
expenditure meets the definition of an improvement contained in
Section 1 of this administrative regulation.
(4) The cabinet may require verification of information and
request additional documentation at its discretion prior to issuing
an advisory opinion.
(5) The cabinet shall issue a written advisory opinion within
thirty (30) days of receipt of a completed request for an advisory
opinion or of receipt of additional information.
(6) Public notice of the advisory opinion shall be published in
the monthly certificate of need newsletter.
(7) An affected person may request a public hearing regarding
an advisory opinion in writing within thirty (30) days of the public
notice of the advisory opinion.
(8) The public hearing shall be held within forty-five (45) days of
the date of the filing of the request and shall be conducted in
accordance with the provisions of Section 16 of this administrative
regulation.
(9) The cabinet shall enter a final decision regarding the advi-
sory opinion, within forty-five (45) days of the completion of the
public hearing.
(10) If a public hearing is not requested, the advisory opinion
shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a
Health Service. (1) Health facilities that make additions to an exist-
ing health service for which there are review criteria in the State
Health Plan but for which a certificate of need is not required to
include ICF/MR respite beds, or add equipment for which there are
review criteria in the State Health Plan but for which a certificate of
need is not required, shall notify the cabinet that a service or
equipment has been added within ten (10) days of addition.
(2) Notice of Addition of a Health Service or Equipment (Form
#10) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement
Communities. (1) In order to be certified as a continuing care retirement
community, a certificate of compliance shall be obtained from the
Division of Certificate of Need.
(2) To obtain a certificate of compliance, a continuing
care retirement community shall complete and file Form #11
thereby certifying that:
(a) All residents shall have a written agreement with the
continuing care retirement community;
(b) The continuing care retirement community shall offer a
continuum of residential living options and support services to its
residents age sixty (60) and older and may offer these living op-
tions and services to persons below age sixty (60) on an as
needed basis;
(c) None of the health facilities or health services established by the continuing care retirement community under this section
shall apply for or become certified for participation in the Medicaid
Program, and that this restriction shall be disclosed in writing to each of its residents;
(d) A claim for Medicaid reimbursement shall not be submitted
for a person for a health service established by the continuing care
retirement community under this section, and that this restriction shall be disclosed in writing to its residents;
(e) All residents in nursing home beds shall be assessed using
the Health Care Financing Administration approved long-term care
resident assessment instrument. The assessment shall be trans-
mitted to the state data bank if the nursing home bed is certified for
Medicare participation;
(f) Admissions to continuing care retirement community nursing
home beds shall be exclusively limited to on-campus residents;
(g) A resident shall not be admitted to a continuing care retire-
ment community nursing home bed prior to ninety (90) days of
residency in the continuing care retirement community unless the
resident experiences a significant change in health status docu-
mented by a physician;
(h) A resident shall not be involuntarily transferred or dis-
charged without thirty (30) days prior written notice to the resident or the resident's guardian;
(i) The continuing care retirement community shall assist a
resident upon move-out notice to find appropriate living arrange-
ments;
(j) The continuing care retirement community shall share in
formation on alternative living arrangements provided by the Divi-
sion of Aging Services at the time a move-out notice is given to a
resident and
(k) Written agreements executed by the resident and the con-

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sitting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Division of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall act on the application of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to continue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.68 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2004-2006 State Health Plan. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the occurrence on the first business day following the event) report the following events to the Division of Certificate of Need by fax at (502) 564-0302 or e-mail (joni.cracraft@ky.gov):

(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death".

1. A death shall be considered a "cardiac death" if the death was due to any of the following:
   a. Acute myocardial infarction,
   b. Cardiac perforation/pericardial tamponade,
   c. Arrhythmia or conduction abnormality;
   d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:
      (i) During the index catheterization; or
      (ii) During the index hospitalization;
   e. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or
   f. Any death in which a cardiac cause could be excluded.
   2. A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph;

(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent life threatening cardiac disease; or
   (c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

(2) Hospitals participating in the pilot program shall report to the Division of Certificate of Need in writing within seven (7) days, any of the following events:

(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure;

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;

(c) Recurrent O wave or Non-O wave Myocardial infarction (MI) during the initial hospitalization;

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:
   1. Hematoma more than four (4) centimeters;
   2. Retropontonal Bleed;
   3. False Aneurysm;
   4. AV fistula;
   5. Peripheral ischemic/nerve injury; or
   6. Hemolysis and Hemolytic anemia.

(3) Hospitals participating in the pilot program shall:

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot program hospital and the collaborating tertiary hospital;

(b) Convene the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and at a minimum, include:
   1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;
   2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;
   3. The technical quality of the catheterization and angioplasty procedures performed; and
   4. The "door to cath lab time" and "door to treatment time";

(c) Develop and implement a plan of correction for any problems identified;

(d) Develop a process for including the findings of the Joint PI Committee's review in the pilot program hospital's performance improvement program;

(e) Require the Joint PI Committee to make a quarterly recommendation to the Division of Certificate of Need whether the pilot program should continue; and

(f) Require all staff (including, at a minimum, interventional cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program PI process, to attend a minimum of one (1) meeting of the Joint PI Committee per year.

(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.

(a) If the outcomes were worse at a pilot hospital, that facility shall file and implement a plan of correction with the Division of Certificate of Need.

(b) If the facility's results do not improve after one (1) quarter of implementing a plan of correction, the Division of Certificate of Need may terminate the facility's participation in the pilot program.
(5) Hospitals participating in the pilot program shall:
   (a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;
   (b) Develop policies and procedures that will assure that all Interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each Interventional cardiologist;
   (c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs, and
   (d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.
(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director’s notification to the Division of Certificate of Need that all training requirements have been fulfilled. Within twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.
(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department’s letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.
(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.
(9) All physicians performing percutaneous coronary intervention (PCI) at a pilot program hospital shall:
   (a) Continue to perform no fewer than 100 cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than 400 angioplasty procedures are being performed per year; and
   (b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures.
(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital that complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals shall develop this training program.
   (b) Training of all staff including, at a minimum, all Interventional cardiologists, nurses and technicians, shall be performed on the intra-aortic balloon pump annually.
   (c) All staff involved in providing PCI, including the Interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.
   (d) Inservice programs shall be at a minimum, be based upon need identified through staff evaluations and quality assurance process.
(11) The Division of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:
   (a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);
   (b) Records obtained through an audit;
   (c) Peer review reports; or
   (d) Reports on serious adverse events.
(12) Upon notification to the hospital by the Division of Certificate of Need, the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures.
(13) In order to assist the Division of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Division of Certificate of Need may collaborate with university based researchers to:
   (a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and
   (b) Conduct an evaluation of the short- and long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.
(14) The Division of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital’s continued provision of this service.
(15) The Division of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.
(16) Three (3) years from the start date of the pilot program, the Division of Certificate of Need shall publish a report on the program. The report shall:
   (a) Indicate whether it is in the best interest of the Commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and
   (b) The requirements for patient selection, procedural volume, and staffing that hospitals shall continue to meet to provide this service if the Division of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

(2) The following information shall be submitted about every MRI unit utilized in the Commonwealth:
   (a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
   (b) Identification of designated contact person or authorized agent of each facility;
   (c) Make, model, and serial number of each unit;
   (d) Date the unit became operational at each site;
   (e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational); and
   (f) Number of scans performed during the previous calendar year.
(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.
(4) The information shall be provided by completion of “The Annual Survey of Magnetic Resonance Imaging Services” be obtained, completed, and transmitted electronically by accessing the Office of Health Policy’s Web site at http://chfs.ky.gov/hop/con. A copy may also be obtained at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.
(5) Within thirty (30) days of an event, the designated contact person or authorized agent shall notify the Office of Health Policy about any change in the facility’s address or the addition of another MRI unit as well as the discontinuation of any units.
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PROVIDERS*, (Form #2B) (6/15/99);
(d) "Certificate of Need Application for Change of Location, Replacement, or Cost Escalation", (Form #2C) (3/6/03);
(e) "Notice of Appearance", (Form #3) (3/6/03);
(f) "Witness List", (Form #4) (3/6/03);
(g) "Exhibit List", (Form #5) (3/6/03);
(h) "Cost Escalation Form", (Form #6) (5/15/99);
(i) "Request for Advisory Opinion", (Form #7) (3/6/03);
(j) "Six (6) Month Progress Report", (Form #8) (5/15/99);
(k) "Acquisition of a Health Facility, Notice of Intent to Acquire (Form #9)", (3/6/03);
(l) "Notice of Addition of a Health Service or Equipment", (Form #10) (5/15/99);
(m) "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", (Form #11) (11/29/00); and
(n) "Annual Survey of Magnetic Resonance Imaging Services", (5/12/06).

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

CHRIS CORBIN, Executive Director
MARK D. BIRDWISTELL, Secretary
APPROVED BY AGENCY: March 15, 2007
FILED WITH LRC: March 15, 2007

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 23, 2007, 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 April 16, 2007, 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 April 30, 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) 564-7705, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Shane O’Donley 502-564-9589 ext. 3274
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the process by which the Certificate of Need program shall be implemented.
(b) The necessity of this administrative regulation: Pursuant to KRS 216B.040, the cabinet may promulgate administrative regulations to establish the certificate of need review procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet implement a Certificate of Need program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the regulation to modify current review procedures in an effort to improve administrative efficiency.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will provide for the following changes:
1. Replace an existing non-substantive review category with a new category; and
2. Various corrections of technical errors within the regulation.
(b) The necessity of the amendment to this administrative regulation: To improve the efficiency and effectiveness of the current certificate of need process.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet promulgate administrative regulations to establish the certificate of need review procedures.
(d) How the amendment will assist in the effective administration of the statutes: It will improve the efficiency and effectiveness of the current certificate of need process and improve access to affordable quality healthcare for the citizens of the Commonwealth.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who may benefit from improved access to quality, affordable healthcare.
(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, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take with comply with this administrative regulation or amendment: No further action will be required by current licensed or certificate of need approved healthcare facilities or services.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional expenditures will be required.
(c) As a result of compliance, what net benefits will accrue to the entities identified in question (3): The individuals who utilize healthcare may benefit from improved access to quality, affordable healthcare.
(g) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) Initial: None
(ii) On a continuing basis: None
(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certificate of Need application fees.
(i) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The modifications to this administrative regulation will not necessitate additional fees or funding.
(j) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No additional fees will be created.
(k) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 amendment may impact admissions to government owned or controlled acute care hospitals.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 216B.010 authorizes the Cabinet for Health and Family Services to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services and providers, and to deliver a cost-efficient health-care delivery system for the citizens of the Commonwealth. KRS 216B.095 (3)(f) authorizes the
Cabinet for Health and Family Services to grant nonsubstantive review status to an application for a certificate-of-need pursuant to the Cabinet's administrative regulations.

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? 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

Expenditures (+/-): None

Other Explanation: N/A

Cabinet for Health and Family Services
Department for Public Health
Division of Laboratory Services (Amendment)


REQUIRES: KRS 211.180, 214.010, 214.160, 214.170, 214.185, 214.420

STATUTORY AUTHORITY: KRS 194A.050 [194C.050], 211.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 mandates the Cabinet for Health and Family Services [Human Resources] to implement [land-conduct] a statewide program for the detection, prevention and control of communicable diseases. The purpose of this administrative regulation is to establish uniform procedures for the diagnosis, treatment, prevention and control of sexually transmitted diseases (STD). KRS 214.420 [et seq.] provide for the confidentiality of all information, records or reports pertaining to sexually transmitted diseases.

Section 1. Definitions. [As used in the administrative regulation]

1. "Certified or Accredited [Approved—serology] laboratory" means a laboratory that has been evaluated and certified or accredited by one (1) of the following regulatory agencies: Joint Commission Accreditation of Health Care Organizations (JCAHO), College of American Pathologists (CAP), Centers for Medicare and Medicaid Services (CMS), Commission on Office Laboratory Accreditation (COLA), Clinical Laboratory Improvement Amendments (CLIA) or has been issued a laboratory license from the state of Kentucky. The laboratory must hold certification or accreditation [the Cabinet for Human Resources] for performing [serological] tests for syphilis in compliance with [Kentucky's prenatal screen KRS 214.180 [et seq.]].

2. "Certified or approved serology test" means the VDRL slide test or RPR 18 mm circle card test or other Food and Drug Administration (FDA) approved test performed in accordance to the directions of the manufacturer.

3. "Medical health care professionals" means those health care professionals who are licensed or certified by a body granted such authority by KRS 216.925 and pass the qualifying examination;

4. Work under the supervision of a family physician in a network for a minimum of five (5) years and pass the qualifying examination in accordance with KRS 216.925.

5. "Reasonably suspected of being infected with a sexually transmitted disease" means any person named as a sexual contact in a controlled interview with a second person infected with an STD, within the incubation period for the STD, or having a laboratory test result consistent with an STD infection.

6. [KRS 194A.050] "Sexually transmitted diseases" or [[STD]] means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, [acquired immunodeficiency syndrome (AIDS),] human immunodeficiency virus (HIV) infection, nongonococcal urethritis, mucopurulent cervicitis, and chlamydia trachomatis infections including lymphogranuloma venereum and human papillomavirus (HPV).

7. [KRS 194A.050] "Sexually transmitted diseases (STD)" for which a treatment exists and renders them noninfectious" means syphilis, gonorrhea, chancroid, granuloma inguinale, nongonococcal urethritis, mucopurulent cervicitis, and Chlamydia trachomatis infections including lymphogranuloma venereum.

8. "An approved serology test" means the VDRL slide test or RPR 18 mm circle card test or other test approved by the Cabinet for Human Resources and performed as described in the current edition of Manual of Tests for Syphilis published by the United States Public Health Service.

9. The phrase "reasonably suspected of being infected with a sexually transmitted disease" is considered to mean any person either named in a controlled interview with a second person infected with a STD, as a sexual contact of that second person within the incubation period for the STD, or having a laboratory test result indicating a likelihood of infection with a STD.

Section 2. Medical Examination and Treatment of Sexually Transmitted Diseases for Which a Treatment Exists. To render them Noninfectious. (1) Any person infected with, or reasonably suspected of being infected with, a sexually transmitted disease shall undergo such medical examination as is necessary, including such laboratory testing procedures deemed advisable by the examining physician to reasonably determine the existence or nonexistence of the diagnosed or suspected sexually transmitted disease.

2. If such person is determined to be infected with a sexually transmitted disease—or there is the potential that the person is incubating the disease, the shall undergo such treatment or follow-up as may be determined adequate by the examining physician to render the person noninfectious or to prevent the onset of disease.

Section 3. Investigation and Enforcement. (1) Only authorized personnel of the Cabinet for Health and Family Services [Human Resources] and local health departments assigned to sexually transmitted disease control activities are empowered to carry out the prevention and control provisions set forth in this administrative regulation.

2. Their duties shall include, among other things, the investigation of persons known to be or reasonably suspected of being infected with a sexually transmitted disease.

3. Such authorized personnel are empowered to direct that medical examinations, including laboratory tests, be conducted on [of] persons reasonably suspected of having a sexually transmitted disease.

Section 4. Certified or Accredited [Approved—Serology] Laboratory for [Prenatal] Tests. (1) The laboratory shall have as its director a physician licensed to practice medicine in Kentucky or a person who meets the requirements set forth in 902 KAR 11:030, Section 1(4)(5) or (6).

2. All certified or accredited [approved] laboratories shall maintain satisfactory performance that meets CLIA or other certifying or accrediting body regulations for syphilis and other sexually transmitted disease testing.

3. In a serological test for syphilis proficiency test program approved by the cabinet.

(a) Proficiency test results shall be reported on forms provided by the cabinet within seven (7) days after specimen are received.
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Section 5. Requirements for Reporting STD to Public Health.
(1) Medicaid health care professionals and physicians shall report STD cases as set forth in 502 KAR 2:020.
(a) Cases shall be reported to the local health department or the Division of Epidemiology, Department for Public Health using an "EPID 200, Kentucky Reportable Disease Form", prepared and furnished by the Cabinet for Health and Family Services or a computer generated facsimile with the same data fields listed.
(b) Medicaid health care professionals shall report cases of primary, secondary, tertiary latent and congenital syphilis not later than twenty-four (24) hours after diagnosis.
(c) Cases with other types of syphilis and other reportable STD shall be reported within five (5) business days after diagnosis.
(2) Hospitals and institutions may conduct their own testing program within the institution or through a licensed medical laboratory.
(a) Hospitals and institutions that conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of the attending physician or health care provider and shall report positive test results for primary, secondary, tertiary latent, and congenital syphilis to the local health department or the Division of Epidemiology, Department for Public Health not later than twenty-four (24) hours after being processed by the laboratory.
(b) Positive test results for other types of syphilis and other reportable STD should be reported to the local health department or Division of Epidemiology, Department for Public Health within five (5) business days.
(c) The obligation of hospitals and institutions that may conduct their own testing program within the institution or through a medical laboratory to report positive test results shall not supersede these reporting requirements for physicians or other midlevel health care professionals.
(d) Reports to the Department for of Public Health shall be submitted on an "EPID 240, Report of Positive/Reactive Test for STD", prepared and furnished by the Cabinet for Health and Family Services or a computer generated facsimile with the same data fields listed.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "EPID 200, Kentucky Reportable Disease Form", edition 5/06; and
(b) "EPID 240, Report of Positive/Reactive Test for STD", edition 1/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Laboratory Services, 100 Sover Boulevard Suite 204, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAMS HACKER, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: February 15, 2007
FILED WITH LRC: March 1, 2007 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on April 23, 2007 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 April 16th, 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. 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 April 30, 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: Medina Tipton
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the diagnosis, treatment, prevention and control of sexually transmitted diseases.
(b) Why this administrative regulation is needed: The necessity of this administrative regulation: This administrative regulation mandates that there is a statewide program for the detection, prevention and control of communicable diseases.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation helps to define how statewide laboratories conduct testing for sexually transmitted disease.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides uniform procedures for the diagnosis, treatment, prevention and control of sexually transmitted diseases.
(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 administrative regulation has been amended to allow hospitals and institutions to conduct their own testing program or contract with a licensed medical laboratory that is certified or accredited by Joint Commission Accredited of Health Care Organizations (JCAHO), College of American Pathologists (CAP), Centers for Medicare and Medicaid Services (CMS), Commission on Office Laboratory Accreditation (COLA), Clinical Laboratory Improvement Amendments (CLIA) or has been issued a laboratory license from the state of Kentucky.
(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is needed to better reflect current practice in the statewide testing for sexually transmitted diseases and to eliminate redundancy by requiring the Cabinet for Family and Human Services to record proficiency test results that are encompassed by outside certifying or accrediting bodies.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment will continue to allow the Cabinet to implement and conduct a statewide program for the detection, prevention and control of communicable disease.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by modernizing the uniform procedures for the diagnosis, treatment, prevention and control of sexually transmitted diseases.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Hospital laboratories which provide syphilis testing, medical laboratories, and the Division of Laboratory Services within the Department of Public Health.
(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, includ-

(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 identified in question (3) will be required to maintain accreditation or certified status. Independent health departments will be responsible for ensuring that outside laboratories are accredited or certified by various accrediting or certifying bodies.

(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 any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The proficiency area of the Division of Laboratory Services will no longer be required to print, distribute, collect and record the "Application for Approval of Laboratory" Form 239 which states that various laboratories are accredited or certified. Hospital laboratories and medical laboratories will no longer be required to fill out the "Application for Approval of Laboratory" Form 239 to validate that they are indeed certified or accredited.

(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 for the implementation and enforcement of this administrative regulation: N/A

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if necessary, or if the change is an amendment: N/A

(7) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 333 of the Public Health Service Act (42 U.S.C. sec. 263a), as revised by the Clinical Laboratory Improvement Amendments (CLIA), Pub. L. 100-578.

2. State compliance standards. KRS 214.160

3. Minimum or uniform standards contained in the federal mandate (1) in general:
The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section:
(a) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results,
(b) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,
(c) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualifications shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,
(d) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and
(e) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

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 change the responsibilities or requirements required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

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 affect the Department of Public Health and the division of health services in the Department of Public Health.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Section 333 of the Public Health Service Act (42 U.S.C. sec. 263a) as revised by the Clinical Laboratory Improvement Amendments (CLIA), Pub. L. 100-578; and KRS 214.160

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 administering 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 administering 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives (Amendment)
907 KAR 1:025. Payment for services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, and a nursing facility with an all-inclusive rate unit.

RELATES TO. KRS 142.363, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 458, 491, 14 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s.

STATUTORY AUTHORITY: KRS 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

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 establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution
Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's costs which may be allowed by the department in establishing the reimbursement rates.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD); or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or

2. An institution for mental diseases.

(3) "Cost-based facility" means a facility which:

(a) The department shall reimburse for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;

2. An intermediate care facility for individuals with mental retardation or a developmental disability; or

3. An institution for mental diseases.


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

(6) "Global Insight Index [DRI]" means an indication of changes in health care costs from year to year developed by Global Insights Index [Data Resources Incorporated].

(7) "IMD" means an institution for mental diseases, excluding psychiatric hospitals.

(8) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to a facility; and

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF.

(9) "Occupancy factor" means a percentage representing:

(a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

(10) "Prospective rate" means a payment rate for routine services based on allowable costs and other factors which, except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(11) "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(iii).

(12) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Long-term Care.

(13) "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-MR-DDs.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with mental retardation or a developmental disability or a nursing facility with an all-inclusive rate unit, a facility which desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, it shall be required to have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components or principles established in this section.

(1) Prospective payment rates for routine services shall be set by the department on a facility-specific basis, and shall not be subject to retroactive adjustment except as specified in this section of this administrative regulation.

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:

   a. A governmentally-imposed minimum wage increase, staffing ratio increase, or a level of service increase; and

   b. The increase was not included in the Global Insight Index [DRI].

2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or

3. The facility experiences a governmentally-imposed displacement of residents.

(d) The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c)(2) of this subsection of this paragraph shall not exceed the amount by which the cost increase resulting directly from the governmental action exceeds an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

a. Salaries; and

b. Other.

2. The effective rate of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

3(a) The state shall set a uniform rate for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report which has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3(b) Partial year, or budget cost data shall be used if a full year's date is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating costs to:

1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:

   a. Not pay the facility twice for the same costs; and

   b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

   a. The department shall not make a separate rate adjustment; and

   b. The minimum wage costs shall not be deleted from the trending and indexing factors.

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(c) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:

1. Represents interest on:

   a. Long term debt existing at the time the provider enters the program; or
b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(d) The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it can be demonstrated that the related organization is equivalent to a second party supplier.

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

5(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for individuals with mental retardation or a developmental disability entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(c) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9;

(c) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(b) The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences or any related activities that are not related to FN training or educational purposes; or

(e) Costs related to lobbying.

(f) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a)1. Determine the actual gain on the sale of the facility; and

2. Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis;

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price;

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred; and

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

10. Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For bona fide changes of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(I).

11(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and

2. Services performed by the facility; and

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; and

5. Program planning.

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that if an expansion and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

13. The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost;

(a) If a field audit is not determined to be necessary, the cost report shall be settled without an audit;

(b) If a desk audit is requested, the desk audit shall be used for purposes of
verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; and

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:
(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;
(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);
(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or
(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) A facility shall provide the services mandated in 42 C.F.R. 483.10(c)(8)(i).

(16) A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with a nonstate, privately-owned facility's occupancy factor.

(a) An occupancy factor shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days for (ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). (b) [Except for a state-owned facility] A minimum occupancy factor shall be ninety (90) percent of certified bed days for nonstate, privately-owned facilities with less than ninety (90) percent certified bed occupancy.

(c) [A minimum occupancy factor for a state-owned facility shall be seventy (70) percent of certified bed days.]

(d) The department may impose a lower occupancy factor for a newly constructed or newly participating nonstate, privately-owned facility, or for an existing nonstate, privately-owned facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(e) The department may impose a lower occupancy factor during the first two (2) full fiscal years an existing cost-based nonstate, privately-owned facility participates in the program under this payment system.

(18) A provider tax on a cost-based facility shall be considered an allowable cost.

(19) All other costs shall be:
(a) Other care-related costs;
(b) Other operating costs;
(c) Capital costs; or
(d) Indirect ancillary costs.

(20) Basic per diem costs for each major cost category (nursing services costs and all other costs) shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:
(a) Global Insight Index [DRI] Inflation factor; and
(b) Occupancy factor for a nonstate, privately-owned facility.

(21) The DRI Inflation factor applied to the ICF-MR-DD for the period beginning January 1, 2006 and ending June 30, 2006 shall be increased by an additional six and eight-tenths (6.8) percent.

(22) Maximum allowable costs shall be the maximum amount which may be allowed to a facility as reasonable cost for the provision of a supply or service while complying with limitations expressed in related federal or state regulations.

(23) [23] Nursing services costs shall be the direct costs associated with nursing services.

(24) State-owned or operated ICF-MR-DD reimbursement for noncapital routine services shall be subject to an upper payment limit. The upper payment limit:
(a) Shall be an aggregate limit on ICF-MR-DD reimbursement paid by the department;
(b) Shall equal one hundred percent of the aggregate cost for a state fiscal year;
(c) Shall be revised annually by the Global Insight Index using the most recent full year of Medicaid paid days;
(d) Shall not be rebased more frequently than every three (3) years; and
(e) Base year shall be State Fiscal Year 2005.

(24) The department shall retrospectively cost settle state-owned or operated ICF-MR-DD reimbursement for noncapital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services. Retroactive settlement shall entail:
(a) Comparing interim payments with the properly apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;
(b) A tentative cost report settlement based upon:
1. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or
2. 100 percent settlement of any liability due the department.

(c) A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(25) The department, regarding state-owned or operated ICF-MR-DD reimbursement for noncapital routine services:
(a) Shall use projected data in order to approximate as closely as possible an interim rate expected to correspond to postsettlement cost; and
(b) May adjust interim rates up or down as necessary to approximate a rate corresponding as close as possible to anticipated postsettlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect the following:

(1) The adjusted allowable cost for the facility; and
(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an Intermediate care facility for individuals with mental retardation or a developmental disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1.023; or
(b) Laboratory procedures or x-rays if ordered by a:
1. Physician;
2. An advanced registered nurse practitioner (ARNP) if the laboratory test or x-ray is within the scope of the ARNP's practice; or
3. Physician assistant if:
   a. Authorized by the supervising physician; and
   b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an Intermediate care facility for individuals with mental retardation or a developmental disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services identified in 907 KAR 1.023;
(b) Laboratory procedures or x-rays if ordered by a:
1. Physician;
2. An ARNP if the laboratory test or x-ray is within the scope of the ARNP's practice; or
3. Physician assistant if:
   a. Authorized by the supervising physician; and
   b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or
(c) Psychological or psychiatric therapy.
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(3) Ancillary service.
   (a) Reimbursement shall be subject to a year-end audit; retroactive adjustment, and final settlement.
   (b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.105.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:
   (a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or
   (b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1) A nursing facility recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate for services provided in the distinct part ventilator unit:
   (a) A distinct part ventilator unit shall:
      (1) Have a minimum of twenty (20) beds;
      (2) Maintain a census of fifteen (15) patients; and
      (3) Base the patient census upon:
         1. The quarter preceding the beginning of the rate year; and
         2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year.
   (3)(a) The fixed rate for a hospital-based facility shall be $583.82 per day.
   (b) The department shall reimburse a freestanding facility:
      1. A fixed rate of $317.29 per day; and
      2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) (3) of this section shall be increased or decreased based on the Data Resource Incorporated rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of distinct part ventilator nursing facility units shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:
   (a) Be Medicare and Medicaid certified;
   (b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;
   (c) Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation; and
   (d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

   (2) Except as provided in subsection (3) of this section, a nursing facility with a Medicaid certified brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at $3725.95 (2001) per diem for services provided in the brain injury unit.

   (3) A facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) negotiated rate which shall not exceed this facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1.671, Section 8 and 9.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Ventilator Unit, a Nursing Facility With a Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility.

   (1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1.755, Section 4.

   (2) The department shall reimburse a facility for a service delivered to an individual if the facility complies with the requirements of 907 KAR 1.755.

   (3) Failure to comply with 907 KAR 1.755 may be grounds for termination of a facility's participation in the Medicaid Program.

Section 10. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:
   (a) A nursing facility with a certified brain injury unit;
   (b) A nursing facility with a distinct part ventilator unit;
   (c) A nursing facility designated as an institution for mental diseases;
   (d) A dually-licensed pediatric facility; or
   (e) An intermediate care facility for individuals with mental retardation or a developmental disability.

   (2) A payment made to a facility governed by this administrative regulation shall:
      (a) Be made in accordance with the requirements established in 907 KAR 1.022; and
      (b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities.

   (1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of $550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

   (2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if:
      * (a) Funding is available; and
      * (b) The facility:
         1. Is located within the Commonwealth of Kentucky;
         2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;
         3. Only provides services to children under age twenty-one (21); and
         4. Has forty (40) or more licensed beds.

   (3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:
      (a) Apply to services provided on or after July 1, 2002;
      (b) Be made on a quarterly basis; and
      (c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference.

   (1) The following material is incorporated by reference:
      (a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition; and

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: February 26, 2007
FILED WITH LRC: March 1, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on April 23, 2007 at 8 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 April 16, 2007, 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 April 30, 2007. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephane Brammer-Bames

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

   (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 the statute by establishing the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment updates the reference from "Data Resources Incorporated" to the "Global Insights Index"; removes the minimum occupancy factor for state-owned ICF-MR-DDs; allows the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increases the rate paid to nursing facilities with Medicaid certified brain injury units (for specialized rehabilitative services for persons with brain injuries) from a fixed rate of $360 to $475 per dem.

   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update obsolete language; assure compliance with federal rules related to ICF-MR-DD facility reimbursement by allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increase the rate paid to nursing facilities with Medicaid certified brain injury units to assure that the facilities are fairly compensated for services provided to residents with brain injuries.

   (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year and increases the rate paid to nursing facilities with Medicaid certified brain injury units to assure that the facilities are fairly compensated for services provided to residents with brain injuries.

   (d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of the statute by updating obsolete language; removing the minimum occupancy factor for state-owned ICF-MR-DDs; allowing the department to cost settle payments made to state-owned ICF-MR-DDs each year; and increasing the rate paid to nursing facilities with Medicaid certified brain injury units (for specialized rehabilitative services for persons with brain injuries) from a fixed rate of $360 to $475 per dem.

   (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: State-owned ICF-MR-DDs and nursing facilities with Medicaid certified brain injury units will 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) Which of the actions each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State-owned ICF-MR-DDs will be subject to yearly cost settlements to assure compliance with federal rules related to reimbursement and nursing facilities with Medicaid certified brain injury units will receive an increased rate to help assure that the facilities are fairly compensated for services provided to residents with brain injuries.

   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Regulated entities will not be subject to any costs associated with implementation of this amendment.

   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). State-owned ICF-MR-DDs will be subject to yearly cost settlements and nursing facilities with Medicaid certified brain injury units will receive an increased rate for services provided to residents with brain injuries.

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

   (a) Initially: The Department for Medicaid Services (DMS) anticipates that by cost settling payments made to state-owned ICF-MR-DDs each year, an increase in expenditures of approximately $13,825,881 ($9,618,656 federal/$4,206,225 state) is expected. DMS further anticipates that increasing the rate paid to nursing facilities with Medicaid certified brain injury units will result in an increase in expenditures of approximately $702,721 ($488,953 federal/$213,768 state). Total increased expenditures as a result of this amendment equal $14,528,602 ($10,107,510 federal/$4,418,992 state).

   (b) On a continuing basis: DMS anticipates an increase of approximately $14,526,602 ($10,107,610 federal/$4,418,992 state) on a continuing basis.

   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XXIA of the Social Security Act and matching funds of general fund appropriations.

   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this
administrative regulation.

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

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) 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 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? State-owned ICF-MR-DDs and Medicaid certified brain injury units will be impacted by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 447.275 and KRS 205.220.

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? State-owned ICF-MR-DDs will see an increase in reimbursement after DMS cost settles payment at the end of the year. Nursing facilities with Medicaid certified brain injury units will see an increase in reimbursement for preauthorized specialized rehabilitative services from a fixed rate of $360 to $475 per diem.

(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? State-owned ICF-MR-DDs may see an increase in reimbursement after DMS cost settles payment at the end of the year. Nursing facilities with Medicaid certified brain injury units will see an increase in reimbursement for preauthorized specialized rehabilitative services from a fixed rate of $360 to $475 per diem.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates by cost settling payments made to state-owned ICF-MR-DDs each year, an increase in expenditures of approximately $13,823,881 ($9,618,668 federal/$4,205,225 state) is expected. DMS further anticipates that increasing the rate to nursing facilities with Medicaid certified brain injury units will result in an increase in expenditures of approximately $702,721 ($486,953 federal/$213,768 state). Total increased expenditures as a result of this amendment equals $14,526,602 ($10,107,610 federal/$4,418,992 state)

(d) How much will it cost to administer this program for subsequent years? DMS anticipates an increase of approximately $14,526,602 ($10,107,610 federal/$4,418,992 state) on a continuing basis.

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:
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 2007

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Service
(New Administrative Regulation)

11 KAR 16:070. Dual enrollment under consortium agreement.

RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(4) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the conditions for Early Childhood Development Scholarship eligibility for a student simultaneously enrolled in two (2) or more participating institutions.

Section 1. For purposes of the Early Childhood Development Scholarship program, a student who is otherwise eligible pursuant to KRS 164.518 and is enrolled simultaneously at two (2) or more participating institutions pursuing a program of study jointly offered by those institutions, shall be eligible under this section if:
(1) The eligible program of study is covered by a consortium agreement between the participating institutions; and
(2) The eligible postsecondary student is carrying a combined academic workload at all participating institutions in the consortium equal to no more than nine (9) credit hours, except as provided in 11 KAR 15:010, Section 1(1)(a)

Section 2. Consortium Agreement. Two (2) or more participating institutions in the Early Childhood Development Scholarship program shall, for purposes of Section 1 of this administrative regulation, execute a consortium agreement which meets at least the following terms and conditions:
(1) The agreement shall be written and signed by authorized representatives of each participating institution;
(2) The agreement shall designate which participating institution will serve as the “primary” institution; and
(3) The agreement shall specify that the primary institution shall perform the duties set forth in Section 3 of this administrative regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this administrative regulation, the primary institution designated in a consortium agreement shall assume the following duties and responsibilities:
(1) Maintain all records, including information from all participating institutions about the eligible postsecondary student’s grades, institutional costs incurred, financial aid received, enrollment, and all other information related to the student’s eligibility as is required to be maintained on any other Early Childhood Development Scholarship recipient enrolled in the primary institution;
(2) Disburse the Early Childhood Development Scholarship to the eligible postsecondary student;
(3) Confer academic credit to the eligible postsecondary student for all courses completed at other participating institutions under the consortium agreement as if the courses had been provided by the primary institution;
(4) Monitor the eligible postsecondary student’s enrollment status at all participating institutions in the consortium and indicated the student’s enrollment at the primary institution as the equivalent of the combined enrollment at all participating institutions in the consortium;
(5) Calculate any refund or repayment and make an applicable refund based on the primary institution’s refund policy, as provided in 11 KAR 16:030 based upon a change in enrollment at a participating institution in the consortium, as if the student were enrolled at the primary institution; and
(6) Provide to the authority, on behalf of all participating institutions in the consortium, all required reports and notifications as if the student were enrolled only at the primary institution.

Section 4. The consortium agreement may contain other terms and conditions, not inconsistent with this administrative regulation, as may be deemed necessary or appropriate by the participating institution.

SPENCER NOE, Chair
APPROVED BY AGENCY: February 22, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, April 24, 2007 at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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:

CONTRACT PERSON: Mr. Richard P. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 788, Frankfort, Kentucky 40622-0788, phone (502) 698-7290, fax (502) 696-7233.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renscheir, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the applicant selection process for the Early Childhood Development Scholarship Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Early Childhood Development Scholarship Program by establishing the applicant selection process for the program.

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 change the existing administrative regulation by requiring that an eligible applicant maintain satisfactory academic progress and by extending the application deadlines for scholarships requested for summer academic terms.
(b) The necessity of the amendment to this administrative regulation: the amendment to this administrative regulation is necessary to require that applicants maintaining satisfactory academic progress in any current course work in order to be eligible for an Early Childhood Development Scholarship and continue to maintain satisfactory academic progress while receiving Early Childhood Development Scholarships. The amendment also extends the deadlines for the application process for requesting Early Childhood Development Scholarships for summer academic terms.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment to this administrative regulation will assist in the effective administration of the Early Childhood Development Scholarship Program by requiring eligible applicants to maintain satisfactory academic progress and by extending the application deadlines for scholarships requested for summer academic terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 32 postsecondary institutions eligible for attendance by recipients of Early Childhood Development Scholarships. During the current academic year (July 1, 2000 to June 30, 2001), 344 students have received scholarships under the Early Childhood Development Scholarship Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To be eligible for an Early Childhood Development Scholarship, applicants must meet the additional requirement of maintaining satisfactory academic progress, as determined by the participating institution. The applicant shall also ensure that the completed application is certified by an authorized representative of the participating early childhood facility and received by the professional development counselor on or before April 15 preceding the summer academic term for which the scholarship is requested. The professional development counselor shall ensure that the applications of those persons recommended to receive a scholarship are received by the KOEA on or before May 1 preceding the summer academic term for which the scholarship is requested.

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

(a) Initially: It is estimated that there will be no additional administrative costs to the authority in implementing the amendments to this administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided by appropriations from the Tobacco Settlement Fund. The authority does retain some of the funds for the costs associated in administering the Early Childhood Development Scholarship Program.

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

(8) State whether or not this administrative regulation establishes new fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes new fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inhere-ently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND 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 the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 184.518(3), 164.754(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. This administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effective-ness.

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 will 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 regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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
Kentucky Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:250. Automated Pharmacy System In Residential Hospice Facilities.

RELATES TO KRS 315.010(9), 315.020, 315.035, 315.19(1)(a), 315.295

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.19(1)(a), 315.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.128(1) requires that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. This administrative regulation establishes, consistent with the requirements of KRS 315.19(1)(a), minimum requirements for the control of drugs sold pursuant to a prescription drug order.

Section 1. Definitions. (1) "Automated Pharmacy System" means a mechanical system that delivers prescribed over-the-counter and legend drugs and controlled substances received from a pharmacy licensed in Kentucky that maintains transaction information.

(2) "Residential Hospice Facility" means a facility licensed under KRS Chapter 216B that provides residential skilled nursing care, pain management, and treatment for acute and chronic conditions for terminally ill patients.

Section 2. Responsibility. (1) The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system is responsible for all of the following:

(a) Assuring that the automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed and complying with the recordkeeping and security safeguards pursuant to Section 3 of this administrative regulation;

(b) Assuring medications are reviewed by a pharmacist prior to access;

(c) Implementing an ongoing quality assurance program that monitors performance of the automated system, which is evidenced by written policies and procedures; and

(d) Notifying the board with prior written notice of the installa-
tion or removal of an automated pharmacy system. This notification shall include, but is not limited to the following:
1. Name and address of pharmacy;
2. Initial location of the automated pharmacy system. The automated pharmacy system may thereafter be relocated within the pharmacy or health care facility without providing subsequent notification to the board; and
   (e) Assigning, discontinuing or changing personnel access to the system;
   (f) Assuring that access to the medications comply with state and federal laws; and
   (g) Assuring that the automated pharmacy system is stocked accurately and that the automated pharmacy system stock is checked monthly in accordance with established written policies and procedures, including but not limited to the following:
1. Accuracy;
2. Integrity; and
3. Expiration date.

Section 3. Standards. (1) An automated pharmacy system shall comply with the following provisions:
(a) A pharmacy shall maintain on-site the following documentation relating to an automated pharmacy system:
1. Name and address of the pharmacy or inpatient health care facility where the system is being used;
2. The automated pharmacy system manufacturer’s name, model, and serial number;
3. Description of how the system is used;
4. Written quality assurance procedures to determine continued appropriate use of the system; and
5. Written policies and procedures for system operation, safety, security, accuracy, access and malfunction.
(b) All written policies and procedures shall be maintained in the pharmacy responsible for the automated pharmacy system.
(c) An automated pharmacy system shall maintain adequate security systems and procedures, evidenced by written policies and procedures to prevent unauthorized access to maintain patient confidentiality and to comply with federal and state laws.
(d) Records and data kept by the automated pharmacy system shall meet the following requirements:
1. All events involving the contents of the automated pharmacy system must be recorded electronically; and
2. Records shall be maintained by the pharmacy and be available to the Board and shall include the following:
   a. The time and location of the system accessed,
   b. Identification of the individual accessing the system;
   c. Type of transaction;
   d. Name, strength, dosage form and quantity of drug accessed;
   e. Name of the patient for whom the drug was ordered;
   f. All events involving user database modifications shall be recorded electronically and maintained; and
   g. Such additional information as the pharmacist-in-charge may deem necessary.
   (e) The stocking of all medications in the automated pharmacy system shall be done by a pharmacist, pharmacist intern, or pharmacy technician, which must be under the general supervision of a pharmacist on-site.
   (f) A record of medications stocked into an automated pharmacy system shall be maintained for five (5) years and shall include identification of the person stocking and pharmacist checking for accuracy.
   (g) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.
   (h) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.
   (i) The automated pharmacy system shall provide a mechanism for securing and accounting for medications returned to the system and accounting for wasted medications in accordance with federal and state laws.

Section 4. Application and Filing Requirements.

Section 5. Enforcement.

Section 6. Repeal.

PETER J. ORZALI, Jr., President
APPROVED BY AGENCY: March 14, 2007
FILED WITH LRC: March 15, 2007 at 10 a.m.
PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday April 24, 2007 at 9 a.m. at the Board’s office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, April 17, 2007, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person 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 April 30, 2007. Send written notification of intent to attending the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511; phone (859) 246-2820; fax (859) 246-2823.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Burleson
1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation allows an automated pharmacy system in a hospice residential facility.
   (b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.295.
   (c) How the administrative regulation differs from the current requirements to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that requires the board to promulgate administrative regulations that establishes the requirements for an automated pharmacy system.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for an automated pharmacy system in a hospice residential facility.
   (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:
      (b) The necessity of the amendment to this administrative regulation:
      (c) How the amendment conforms to the content of the authorizing statutes:
      (d) How the amendment will assist in the effective administration of the statutes:
   (f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board anticipates less than five pharmacies annually will be affected by this administrative regulation.
   (g) 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 pharmacy will have to set up policies and procedures regarding the automated dispensing system.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The pharmacy will be able to provide medication more expediently to its patients at the residential hospice facility.
   (d) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No new costs will be incurred.
(b) On a continuing basis: No new costs will be incurred.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increases any fees.
(f) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacies that utilize an automated pharmacy system in a hospice residential facility.

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 Pharmacy 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 315.020, 315.035, 315.191, and 315.255 requires or 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 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 (+/-): Expenditures (+/-): Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Repealer)


RELATES TO: KRS 224.01-070, 224.10-010, 224.10-100, 224.10-270, 224.10-275, 224.10-420, 224.10-440, 224.16-050, 224.10-060, 224.70-100, 224.73-110, 224.73-120

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.120 prohibits an administrative body from issuing standards or by any other name a document where an administrative regulation is required or authorized by law. KRS 13A.130 prohibits an administrative body from using a policy, memorandum, or other form of action-modify or expand a statute or administrative regulation, or expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation. This regulation provides for the incorporation by reference allowed under 1 KAR 1:10 of the documents used by the Natural Resources and Environmental Protection Cabinet to implement 401 KAR Chapter 5, Water Quality and Wastewater Treatment. This administrative regulation repeals Kentucky’s current administrative regulation on documents incorporated by reference for water quality and wastewater treatment.

Section 1. 401 KAR 5:200, Documents incorporated by reference for water quality and wastewater treatment, is hereby repealed.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 15, 2007
FILED WITH LRC: March 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23rd at 10 a.m. (Eastern Time) at the Kentucky Division of Water, Room 6A & B, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2007, 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 reimbursed 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 April 30, 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: 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 administrative regulation repeals the current administrative regulation for documents incorporated by reference in 401 KAR Chapter 5, 401 KAR 5:200.
(b) The necessity of this administrative regulation: 401 KAR 5:200 provides documents for the incorporation by reference allowed under 1 KAR 1:10 for 401 KAR Chapter 5, Water quality and Wastewater Treatment. Currently the documents are incorporated by reference in other 401 KAR Chapter 5 regulations or are obsolete. Therefore, 401 KAR 5:200 is being repealed as it is no longer applicable.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation is part of a comprehensive program for water quality and wastewater treatment.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: Since all of the documents incorporated by reference in this regulation are in other regulations or are obsolete, this 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 the amendment conforms to the content of the authorizing statute: Not applicable.
(d) How the amendment will assist in the effective administration of the statute: Not applicable.
(3) List the type and number of Individuals, businesses, organizations, or state and local government affected by this administrative regulation: No individuals, businesses, organizations, or...
state and local governments 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 5:200.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no mandate to repeal the administrative regulation.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Not applicable.
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)? 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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(New Administrative Regulation)

815 KAR 20:015. Fees and refunds.

RELATES TO: KRS 318.050, 318.054, 318.134
STATUTORY AUTHORITY: KRS 318.050 and KRS 318.134
NECESSITY, FUNCTION, AND CONFORMITY: The office is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. The office is directed by KRS 318.050 to adopt reasonable fees for licensure as a journeyman plumber or master plumber. KRS 318.054 authorizes the office to establish fees for the renewal or revival of licenses, and KRS 318.134 authorizes the office to establish fees for installation permits. This administrative regulation establishes the manner in which fees are to be paid to the office. The regulation also establishes the penalty for nonpayment of fees as well as the requirements to receive a refund for installation permits.

Section 1. Fees. (1) Fees received by the Division of Plumbing shall be made by:
(a) Money order;
(b) Check;
(c) Credit card;
(d) Debit card; or
(e) Electronic funds transfer.
(2) All fees shall be made payable to Kentucky State Treasury.

Section 2. Returned payments. (1) Fees returned to the Division of Plumbing for nonpayment shall be assessed a fee of thirty-five (35) dollars, except when proof of fault of the financial institution is made available.

(2) Companies or individuals which are notified of a returned payment shall, for a period of six (6) months, make all payments to the Division of Plumbing by:
(a) Cashier’s check;
(b) Certified check;
(c) Money order; or
(d) Electronic funds.

Section 3. Permit refunds. Refunds for permits shall be given if:
(a) The refund request is made within twelve (12) months of purchase; and
(b) Work has not begun on the project for which the permit was issued.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 12, 2007
FILED WITH LRC: March 14, 2007 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Ken-
tucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the ways in which fees may be paid to the office. This regulation also establishes a penalty for fees returned for insufficient funds. This regulation also establishes guidelines for obtaining a refund for installation permits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to discourage nonsufficient payments. Minimizing nonsufficient payments will allow staff to devote more time and resources to other necessary duties. This administrative regulation also sets guidelines to be used in determining when refunds are warranted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.050 and 318.054 authorize the establishment of fees for the initial license as well as renewal. KRS 318.134 authorizes the establishment of fees for installation permits. Manner of payment, nonsufficient payment penalties and guidelines for refunds fall within the powers conferred by these statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to discourage nonsufficient payments. Minimizing nonsufficient payments will allow staff to devote more time and resources to other necessary duties. This administrative regulation also sets guidelines to be used in determining when refunds are warranted.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes:

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Plumber and their associated businesses will be affected by this administrative regulation since they pay permit and licensing fees.

(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: Plumber will have to ensure that their payments to the office are properly made. The regulation is to discourage nonsufficient payments.

(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3)? If plumbers do not bounce checks, there will be no costs associated with the regulation. For those that fail to make proper payment, a fee of $35 is imposed and future payments will be required on "good funds".

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Plumbers will benefit by this regulation by having a method for seeking refunds of permit fees on projects that do not go forward.

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

(a) Initially: None

(c) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and staff will be used to implement and enforce this regulation, although there is no additional cost associated with this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes fees in the event of nonpayment.

(9) TIERING: Is tiering applied? Tiering is not applied. All applicants for licenses, renewals or refunds are being treated equally under this administrative 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 Kentucky Office of Housing, Buildings and Construction, Division of Plumbing, 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. The statutory authority for this administrative regulation is found in KRS 318.050 and 318.134.

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 administrative regulation may affect government agencies in the future, but will have no impact on expenditures. There may be a minimal impact on revenues to the extent that the office collects the nonsufficient payment penalties (after a check is returned for insufficient funds, for example).

(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 regulatory amendment may generate minimal revenue in the first year based entirely upon the office's collection of nonsufficient payment penalties.

(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 regulatory amendment may generate minimal revenue in subsequent years based entirely upon the office's collection of nonsufficient payment penalties.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to methods of payment, penalties for nonsufficient payment and refunds.

(d) How much will it cost to administer this program for subsequent years? There will also 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 (+/-):
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Plumbing
(New Administrative Regulation)

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: The office is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the method needed for storage, handling and installation of standard dimension ratio (SDR) 9, cross-linked polyethylene plastic hot and cold water distribution systems components.

Section 1. Material. (1) Cross-linked polyethylene (PEX) shall be produced and labeled as ASTM F-876 for cold water.
(2) Cross-linked polyethylene (PEX) shall be labeled and certified as per ASTM F-1980 for cold or hot water.
(3) Cross-linked polyethylene/aluminum/orocos linked polyethylene (Pex-Al-Pex) shall be produced and labeled as ASTM F-1281.
(4) Cold expansion fittings with PEX reinforcing rings for use with cross-linked polyethylene (PEX) tubing shall be produced and labeled as ASTM F-1980.
(5) Metal insert fittings utilizing a copper crimp ring for cross-linked polyethylene (PEX) tubing shall be produced and labeled as ASTM F-1807.
(6) Stainless steel clamps substution for the copper crimp ring shall be produced and labeled as ASTM F-2098.
(7) Methods of joining pex piping other than mentioned above shall be prohibited unless documentation is provided, from the systems manufacturer, honoring full warranty system installed.
(8) Fittings which have a smaller inside dimension than what is required for the insert portion of the fitting shall not be permitted.

Section 2. Communicating systems. A system consisting of material from multiple manufacturers (i.e. fittings, tubing and crimp rings) shall be prohibited unless documentation from manufacturers is produced providing full warranty.

Section 3. Installation. (1) Water service.
(a) Tubing shall be snaked in ditch to allow for linear expansion and contraction.
(b) Tubing shall not be installed in contaminated soils.
(c) Metallic fittings other than those consisting of red brass shall be protected from corrosion of soil.
(d) The number of fittings shall be kept to a minimum.
(e) The bottom of a trench shall be flat and free of rocks, hollows or other sharp objects.
(f) If soils consist of rock, piping shall be covered with six (6) inches of course sand or pea gravel.
(g) If entering a foundation wall, a rigid sleeve that spans the distance from inside the wall out to the undisturbed soil shall be used to prevent shearing of tubing.
(2) Distribution systems.
(a) When tubing is to be installed and buried under a building, no fittings shall be used.
(b) Tubing passing through a concrete slab or wall shall be protected by use of sleeves.
(c) Tubing passing through metal studs or plates shall be protected by plastic grommets designed for this
(d) Tubing shall not be:
   1. Exposed to direct or indirect ultraviolet light;
   2. Exposed to open flame;
   3. Exposed to petroleum-based caulkings or sealants; or
   4. Exposed to chlorine levels greater than four (4) parts per million (ppm).

Section 4. Hangers and supports. (1) Horizontal tubing shall be supported at intervals not exceeding thirty-two (32) inches.
(2) Vertical tubing shall be supported at intervals not exceeding forty-eight (48) inches.
(3) Tubing shall not be rigidly anchored.
(4) Straps shall be made of plastic material and allow movement.
(5) Straps which are metallic shall be coated to prevent damage.

FLOYD VAN COOK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: March 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall be held on April 24, 2007, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 2007 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by this 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 April 30, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: David Reichert
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes standards for the storage, handling and installation of crosslinked polyethylene chloride plastic hot and cold water distribution systems components.
(b) The necessity of this administrative regulation: This regulation establishes standards for the use of crosslinked polyethylene chloride plastic hot and cold water distribution systems components to ensure compliance with the Kentucky State Plumbing Code and allows for use of newly-developed products.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 allows for the approval of new products as well as standards for construction, installation, or alteration of plumbing and plumbing fixtures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes standards for the use of crosslinked polyethylene chloride plastic hot and cold water distribution systems components in construction, installation or alteration of plumbing and plumbing fixtures.
(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:
regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed plumbers and those doing business with plumbers 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: Plumbers will have to conform to the standards of this regulation in installing this type of distribution system.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no increased costs associated with this regulation or installing such systems.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbers benefit by the availability of this new product and technology.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There should be no initial cost associated with the implementation of this administrative regulation.
(b) On a continuing basis: There should be no ongoing cost associated with the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and existing staff will be used for implementation and enforcement of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There should not be an increase in fees or funding associated with the change to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase fees.
(9) TIERING: Is tiering applied? Tiering is not applied. All licensed plumbers are treated equally and have equal access to the new products under the Kentucky State Plumbing Code.

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 Housing, Buildings and Construction, Division of Plumbing, 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: The statutory authority for this administrative regulation is found in KRS 318.130.
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 administrative regulatory amendment will have no impact on expenditures or revenues.
(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 regulatory amendment will not generate revenue in subsequent years.
(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 regulatory amendment will not generate revenue in subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional cost. This administrative regulation relates to storage, handling and installation of Pex and Pex-Al-Pex piping.
(d) How much will it cost to administer this program for subsequent years? There will also 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:
The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 13, 2007 at 9:30 a.m., in Room 154 of the Capitol Annex. Representative Robert Damron called the meeting to order, and the roll call was taken. The minutes of the February 12, 2007 meeting were approved.

Present were:
- Members: Representative Robert Damron, Co-Chair; Senators Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Danny Fond, Jimmie Lee, and Ron Weston.
- LRC Staff: Dave Nicholas, Emily Caudill, Kara Daniel, Emily Harkender, Donna Little, Mark Matcs, Jennifer Beeler and Ellen Steinberg.
- Guests: Richard Dobson and Angela Robinson, Finance and Administration Cabinet; Nathan Goldman, Board of Nursing; Karen Alexy and Morgain M. Sprague, Department of Fish and Wildlife Resources; Mac Stone and Mark Farlow, Department of Agriculture; Sue Simon, Mindy Yates, Stephen Johnson, Barbara Miller, Richard Nesbitt, Tamela Biggs, Larry Moore, and John M. Rose, Education Cabinet; DJ Wasson, Office of Insurance; John Forgy, Marc Guilfoil and Jamie Haydon, Kentucky Horse Racing Authority; David Gayle, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, March 13, 2007 and submits this report:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Inheritance Tax
103 KAR 2.220. Lien on "Qualified Real Estate". Richard Dobson, executive director, represented the cabinet.

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 to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 2.030. Policies and circulars relating to inheritance tax.

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, 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.

Sales and Use Tax; Service and Professional Occupations
103 KAR 26.010. Service enterprises in general

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; and (2) 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.

Sales and Use Tax; Miscellaneous Retailer Occupations
103 KAR 27.150. Repairers and reconditioners of personal property

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 27.220. Miscellaneous restaurant transactions.

In response to a question by Co-chair Roeding, Mr. Dobson stated that this administrative regulation was not a new tax requirement. He stated that the policy had previously been published in circulars and restaurants were already aware of it. He stated that the information was transferred to this administrative regulation to keep the information available to the public and in conformity with KRS Chapter 13A.

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 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 27.230. Automotive body shops and suppliers.

A motion was made and seconded to approve the following amendments: to amend the TITLE, 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.

103 KAR 27.240. Reporting of sales tax relating to equine breeding fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting 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 28.010. Admissions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 28.030. Producing, fabricating, and processing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 28:141. Repeal of 103 KAR 28:140.

103 KAR 28:170. Sales of dirt and sod.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; General Exemptions
103 KAR 30.140. Energy and energy-producing fuels.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 to 6, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amend-
ments were approved.

103 KAR 30:250. Property used in the publication of newspapers.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 30:260. Pollution control facilities exemption.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 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.

103 KAR 30:270. Oil and gas extraction machinery.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 30:280. Sales to water haulers.
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.

In response to a question by Senator Tapp, Mr. Dobson stated that this administrative regulation provided guidance on taxation of the provision of security lighting by a utility company. He stated that, as with electricity, security lighting for a residential customer was tax exempt but security lighting for commercial accounts was subject to sales tax. 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.

Sales and Use Tax; Administration and Accounting
103 KAR 31:111. Sales and purchases for resale.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Cigarettes
103 KAR 41:140. Circular relating to cigarette licenses and taxes.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) 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 41:150. Cigarette subjobber licenses.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 1 to clarify the definition of "retail location"; and (3) to amend Section 3 to specify that a subjobber shall not have cigarettes delivered directly to the retailer by the wholesaler on his behalf. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 41:160. Unstamped cigarettes damaged in transit.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Motor Fuels
103 KAR 43 320. Policies and circulars relating to motor fuels taxes.
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 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: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Motor Vehicle Usage
103 KAR 44 090. Policies and circulars relating to motor vehicle usage tax.
In response to a question by Co-chair Roeding, Mr. Dobson stated that this administrative regulation rescinded policies and circulars that were repetitive of existing law. He stated that it did not change the taxes that were levied.
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 to 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 44:100 & E. Procedures for refund based on vehicle condition.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to specify the documentation requirements for verifying a vehicle's condition. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 44:120. Incorrect statement of origin.
A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to specify that the administrative regulation also governs an incorrect certificate of title; (2) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Miscellaneous
103 KAR 45:015. Circular relating to the legal process tax and the Spouse Abuse Shelter Fund.
In response to a question by Co-chair Roeding, Mr. Dobson stated that a portion of the legal processing fees collected by county clerks was earmarked for the spouse abuse fund. He stated...
that this administrative regulation did not change that policy but rescinded a circular that was repetitive of existing law and that violated KRS Chapter 13A.

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.

**GENERAL GOVERNMENT CABINET:** Board of Nursing: Board


201 KAR 20:225. Reinstatement of license.


In response to a question by Co-chair Roeding, Mr. Goldman stated that many students in nursing graduate programs were not awarded scholarships despite a need for nurses with graduate degrees. He stated that this administrative regulation changed the formula used to award scholarships in an effort to more evenly distribute scholarship funds.

**COMMERCE CABINET:** Department of Fish and Wildlife Resources: Game

301 KAR 2.049. Small game and fur bearer hunting on public areas. Morgain Sprague, general counsel; and Karen Alexy, acting director, represented the department.

In response to a question by Senator Tapp, Ms. Sprague stated that the department’s administrative regulations were always reviewed by the Department of Fish and Wildlife Resources Commission before being filed with the regulations compiler.

301 KAR 2:081. Transportation and holding of native wildlife.

301 KAR 2:082. Transportation and holding of exotic wildlife.

301 KAR 2:084. Importation of game birds.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendment was approved.

**DEPARTMENT OF AGRICULTURE:** Marketing and Product Promotion

300 KAR 39:020 & E. Kentucky Small Farm Wineries Support Fund. Mac Stone, director, represented the department.

In response to questions by Senator Tapp, Mr. Stone stated that fund distribution applications had been accepted and the first council meeting was scheduled. He stated the response by distributors had been lukewarm but that relationships were being built. He stated the department had sent monthly newsletters and held open council meetings to raise awareness about the program. He stated that most active wineries have applied.

In response to a question by Co-chair Roeding, Mr. Stone stated that the department was confident it could enhance the distribution system and work through differences through activity and communication.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 and 2 to correct statutory citations; and (2) to amend Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION CABINET:** Office of Vocational Rehabilitation: Administration

781 KAR 1:020. General provisions for operation of the office of vocational rehabilitation. Sue Simon, attorney; and Mindy Yates, program evaluator, represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, 6, 8, and 10 to 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.

781 KAR 1:040. Rehabilitation technology services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 3 to more clearly specify the requirements relating to coverage of vehicle modifications. Without objection, and with agreement of the agency, the amendments were approved.

**Office for the Blind: Department for the Blind**

782 KAR 1:010. Federal vocational rehabilitation program. Barbara Miller, Director of Consumer Services; Richard Nesbitt, Director of Kentucky Business Enterprises; and Sue Simon, attorney, represented the department.

In response to questions by Co-chair Roeding, Mr. Nesbitt stated that Kentucky Business Enterprises trains blind individuals to operate food service businesses and establishes them in federal and state buildings across Kentucky. Some of the locations include the capitol and annex, post offices, federal prisons, Kentucky State University, and nine technical colleges in Kentucky.

A motion was made and seconded to approve the following amendments: (1) to amend the title to reflect that this administrative regulation relates specifically to the Kentucky Business Enterprises; and (2) to amend Sections 1, 2, 3, 7, 8, 9, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 1:020. Definition of terms for 782 KAR Chapter 1.

A motion was made and seconded to approve the following amendments: to amend the TITLE, 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.

782 KAR 1:030. Scope and nature of services.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 9, 11 to 14, 19, and 20 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 1:051. Repeal of 782 KAR 1:050.

**Department for Workforce Investment: Unemployment Insurance**

787 KAR 1:020. Change of status; discontinuance of business. Larry Moore, policy analyst; Tamela Biggs, counsel; and John Rose, assistant director, 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; and (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. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:030. Employer contributions.

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.220; 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.

787 KAR 1:050. Social Security number required of employ-
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ees.

In response to questions by Senator Tapp, Mr. Moore stated that this package of administrative regulations was being updated to reflect the government's reorganization and that the changes in this administrative regulation were not substantive. He stated that social security numbers had long been required.

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 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.

787 KAR 1:060. Separation for cause; reports.

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 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.

787 KAR 1:070. Reasonable time for protesting claim.

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.220; and (3) to amend 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.

787 KAR 1:080. Labor dispute or strike, notification.

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; and (2) to amend 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.

787 KAR 1:090. Unemployed worker's reporting requirements.

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 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 3 to clearly establish the process for claiming benefits; and (4) to amend Section 4 to clearly establish the requirements for when an employer may file a claim on behalf of unemployed workers. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:110. Appeals.

In response to questions by Representative Ford, Mr. Moore stated that after a claim is filed, either party could file a protest which resulted in a formal determination. That determination could be appealed to a referee in the appeals branch. The referee's decision could be appealed to the commissioner. Any additional appeals would have to be filed in court. He stated that there was no provision for recovery of costs and attorney's fees if the employee prevailed.

In response to a question by Representative Damron, he stated that a statutory change would be necessary to award costs and attorney's fees.

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 to 5 to: (a) clearly establish the appeals process; and (b) comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:140. Unemployment insurance fund payments.

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; and (2) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:150. Interstate claims.

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; and (2) to amend Sections 1 to 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:170. Cash value of board and lodging.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations, (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) to amend the TITLE and Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:180. Employer's records.

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.220; and (3) to amend 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.

787 KAR 1:190. Recoupment and recovery.

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, and (2) to amend Section 1 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: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend 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.

787 KAR 1:220. Required reports and due dates.
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; and (2) to amend Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:230. Date of receipt of documents defined.
A motion was made and seconded to approve the following amendment: to amend Section 2 to use the word "contractor" rather than "agent" to appropriately identify the contractual relationship with the department. Without objection, and with agreement of the agency, the amendment was approved.

787 KAR 1:240. Fraud disqualifications.
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; and (2) to amend Section 1 to comply with the drafting and formatting 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 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 (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:260. Voluntary election of coverage.
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, and (2) to amend Section 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:270. Covered employment.
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, and (2) to amend 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.

787 KAR 1:300. Successorship.
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.220, and (3) to amend 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.

787 KAR 1:310. Claimant profiling.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to: (a) establish the profiling system required by KRS 341.350(2)(b) to be used to determine if an unemployment claimant is likely to exhaust benefits; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET:
Department of Public Protection: Office of Insurance: Health Insurance Contracts
806 KAR 17:480. Uniform evaluation and reevaluation of providers.
D.J. Wasson represented the office.
In response to a question by Co-chair Roofing, Ms. Wasson stated this administrative regulation incorporates the form a provider must fill out to participate in the insurer's network and provide information to the health care facility.
A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to change the date of the material incorporated by reference; and (2) to amend the material incorporated by reference to clarify the language to be consistent with the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Horse Racing Authority: Harness Racing
811 KAR 1:045. Entries. John Forgy, counsel; Marc Gulfoll, director of standardbred racing, and Jamie Haydon, director of the Kentucky Breeders' Incentive Fund represented the authority.
A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 7 to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 5, 7, 9, 10, 12, 13, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:055. Declaration to start; drawing horses.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (2) to amend Section 1 to clarify when a horse may be added to a race; (3) to amend Sections 1 and 8 to list the circumstances under which a horse may be withdrawn from a race; (4) to amend Section 7 to state when a judge will approve a substitute driver; (5) to amend Section 11 to delete subsections (2) and (3) regarding fines against associations and unlicensed persons; and (6) to amend Sections 1, 2, 3, 4, 6, 7, 8 and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:100. Protests.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 6 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 10 to add the title of the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:110. Timing and records.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 7, and 8 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to clarify the number and types of timers that must be used. 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 TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Section 1 to also repeal 811 KAR 1:135, 1:145, 1:155, 1:160, 1:175, and 1:195. Without objection, and with agreement of the agency, the amendments were approved.
Quarter Horse, Appaloosa, and Arabian Racing
811 KAR 2:120 & E. Kentucky Horse Breeders’ Incentive Fund.
A motion was made and seconded to approve the following amendments: (1) to amend Sections 1-6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to change the registration period from two to three years; and (3) to amend Section 2 to set the original filing deadline for March 31, 2007. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. David Gayle, regulation coordinator, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Sections 12 and 14 to correct typographical errors. 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:

PERSONNEL CABINET: Classified
101 KAR 2:210 & E. Summary Plan Descriptions for the Public Employee Health Insurance Program.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:122. Hunting seasons, methods, and limits for small game.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Water: Public Water Supply
401 KAR 8 040. Laboratory certification.
401 KAR 8 070. Public notification.
401 KAR 8 075. Consumer confidence reports.
401 KAR 8 150. Disinfection, filtration, and recycling.
401 KAR 8 160. Enhanced filtration and disinfection for large systems serving at least 10,000 people.
401 KAR 8 162. Enhanced filtration and disinfection for small systems serving less than 10,000 people.
401 KAR 8 250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.
401 KAR 8 501. Repeal of 401 KAR 8 500.
401 KAR 8 510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.
401 KAR 8 550. Radionuclides.

Kentucky Horse Racing Authority: Thoroughbred Racing
810 KAR 1 080. International wagering hub.

Harness Racing
811 KAR 1 035. Claiming races.
811 KAR 1 075. Racing and track rules.
811 KAR 1 085. Conduct of racing. John Forgy, counsel; Marc Guillot, director of standardbred racing; and Jamie Hayden, director of the Kentucky Breeders’ Incentive Fund, represented the authority.
In response to questions by Representative Damron and Senator Tapp about the prohibition of firearms on association grounds, Mr. Forgy stated that firearms had never been permitted at the back of a racetrack and that some security was provided. Mr. Forgy agreed that the authority would reconsider the provision and requested that this administrative regulation be deferred until the next meeting. Without objection and with agreement of the subcommittee, this administrative regulation was deferred.

811 KAR 1 090. Medication; testing procedures; prohibited practices.
OTHER COMMITTEE REPORTS

COMPLIER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

Senate Standing Committee on Health and Welfare
Meeting of February 28, 2007

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 28, 2007, having been referred to the Committee on February 7, 2007, pursuant to KRS 13A.290(6):

201 KAR 20:240
201 KAR 22:070
900 KAR 1 061
902 KAR 20:240
902 KAR 45:150 & E
908 KAR 2.081
908 KAR 2:190 & E
920 KAR 1.060
921 KAR 2:510
921 KAR 3:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 28, 2007 meeting, which are hereby incorporated by reference.

House Standing Committee on Health and Welfare
Meeting of March 1, 2007

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 March 1, 2007, having been referred to the Committee on February 7, 2007, pursuant to KRS 13A.290(6):

201 KAR 20:240
201 KAR 22:070
900 KAR 1:061
902 KAR 20:240
902 KAR 45:150 & E
908 KAR 2:081
908 KAR 2:190 & E
920 KAR 1:060
921 KAR 2:510
921 KAR 3:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 1, 2007 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 effect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally published in VOLUME 31 (last year) 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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### ORDINARY ADMINISTRATIVE REGULATIONS:

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- **9 KAR 1:040**: Amended
- **10 KAR 2:020**: Amended
- **11 KAR 3:100**: Amended
- **11 KAR 4:080**: Amended
- **16 KAR 6:010**: Amended

- **16 KAR 2:170**: Amended
- **16 KAR 3:080**: Amended
- **16 KAR 5:010**: Amended
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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
(1) 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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